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Supreme Court, U.S.
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No. 07-720

In The
Supreme Court of the United States

LINDA S. COOK,
Petitioner,

v.

TOLEDO BAR ASSOCIATION,
Respondent.

On Petition for Writ of Certiorari to the Supreme Court of the State of Ohio

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. In a lawyer disciplinary procedure is Due Process violated by a requirement that the lawyer express remorse prior to any consideration of the merits of the charges?

2. Is Due Process violated by determination of guilt solely on disbelief of the accused's testimony, where all other evidence supported innocence of the accused lawyer?

3. In a lawyer disciplinary proceeding is a lawyer entitled to a hearing on objections to the Hearing Panel's recommendations if the state Supreme Court Rules provide for that hearing?

RULE 14(b) STATEMENT

All parties to this proceeding are as stated on the cover sheet.

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PETITION FOR WRIT OF CERTIORARI

Linda S. Cook respectfully petitions for a Writ of Certiorari to review the Opinion and Order of Discipline of the Ohio Supreme Court.

OPINIONS BELOW

The Opinion of the Ohio Supreme Court dated July 11, 2007 is officially reported at 114 Ohio St.3d 108. 2007 Ohio 3253 and is reproduced at App. C, pg. 19a.

The Recommendation of the Hearing Panel of the Board of Governors on Lawyer Discipline dated is not officially reported but may be found at App. J, pg. 107a.

JURISDICTION

The Opinion and Order of the Ohio Supreme Court which is sought to be reviewed was entered July 11, 2007. This petition is timely under 28 USC 2101(C) and Supreme Court Rule 13.1 because it is being filed within 90 days of the entry of an Order by the Ohio Supreme Court on September 26, 2007 denying a timely filed motion for Reconsideration of its decision in this matter.

This court has jurisdiction to review the decision of the Ohio Supreme Court pursuant to 28 U.S.C. 1257(a).

STATEMENT OF THE CASE

The Toledo, Ohio Bar Association filed an amended complaint, App I, pg. 101a against a practicing attorney, appellant Linda Cook, alleging that she had prepared three deeds backdating them to take advantage of the Medicaid look back provisions and that she had taken a tax deduction which belonged to her client thereby violating the ethical rules committing misconduct.

Ms. Cook was the only witness called by the Bar Association and testified that she did not commit any of the alleged violations, explaining that a series of mistakes accounted for the dating of the deeds and that she had the written permission of the client to take the tax deduction because the client was unable to use it for lack of sufficient offsetting income. Ms. Cook testified at length explaining her position and denying that she had committed any act constituting misconduct. No other witness testified in support of the misconduct charges.

The Hearing Panel's written recommendation to the Ohio Supreme Court, App. G, pg. 51a indicated that Ms. Cook showed no remorse. The panel did not believe the testimony of Ms. Cook, App. G, pg. 57a, assuming the opposite of her testimony to be the true story in the absence of her coming forward with a believable story of what had occurred, App G, pgs. 57a-67a. There were no other witnesses who testified for the Toledo Bar Association and no one testified in support of the charges of misconduct or in contradiction of the testimony of Linda Cook, Appellant. The Hearing Panel also found misconduct

not set forth or contemplated by the Amended Complaint and of which Ms. Cook had no notice, App. G, pgs. 61a- 67a.

Objections were filed to the recommendation, App. H, pg. 70a. The Ohio Supreme Court scheduled a hearing on the objections in accordance with the court rule providing for such a hearing. On the eve of the hearing date a severe winter storm closed the Columbus, Ohio airport and the Detroit Metropolitan Airport. Interstate Roadways between Detroit and Columbus were also closed to traffic. Counsel for Ms. Cook could not get to Columbus for the hearing and filed by fax an Emergency Motion to Adjourn and Reschedule the hearing. App E, pg. 43a. The motion was denied, App. F, pg. 49a. No hearing was held and the Supreme Court, one Judge dissenting, App. C, pg. 19a, adopted the recommendation of the Hearing Panel. The dissenting judge wrote that Ms. Cook had been denied due process of law App. C, pgs. 35a-37a.

This appeal arises from the recommendation of the Hearing Panel and the Decision of the Supreme Court of Ohio (1) assuming facts which had no evidentiary support, (2) requiring Ms. Cook to show remorse when she was trying to show that she did nothing constituting the misconduct charged and (3) failing to hold a hearing on the Objections to the Hearing Panel's recommendation, in accordance with its own rules.

REASONS FOR GRANTING THE PETITION

1. IN A LAWYER DISCIPLINARY PROCEDURE IS DUE PROCESS VIOLATED BY A REQUIREMENT THAT THE LAWYER EXPRESS REMORSE PRIOR TO ANY CONSIDERATION OF THE MERITS OF THE CHARGES?

The Hearing Panel in conducting a hearing on allegations of misconduct against the appellant, Linda Cook, gave weight to her failure to show remorse in the very hearing in which she was contesting misconduct.

An attorney should not have to show remorse for an act of alleged misconduct while this same attorney is trying to show that the questioned conduct is not misconduct. Such a requirement violated Linda Cook's right to fair play and Due Process. *In Re Oliver*, 333 U.S. 257; 68 S. Ct. 499; 92 L. Ed. 2d 682 (1947); cited with approval *In Re Ruffalo*, 390 U.S. 544; 88 S. Ct. 1222; 20 L. Ed. 2d 117; 43 Ohio Op.2d 459 (1968).

This elementary standard of fairness has been repeatedly recognized as an element of Federal Due process protected by the XIV Amendment. So in criminal prosecutions in Ohio, where a defendant has contested his guilt: *In State vs Ambriez*, 2004 Ohio 5230 (2004). In *Ambriez* the Ohio Appellate Court stated:

> "It appears that the sentences below were partially predicated upon the decision to stand trial. See *United States v Derrick*, 519 F.2d at 4-

> 5. This appearance of impropriety cannot be overcome here because there is not an affirmative showing in the record that the appellant was not penalized for standing trial. See United States v Stockwell, 472 F.2d at 1187. Nor is there an 'unequivocal statement' that standing trial was not a factor considered in sentencing. See United States v Hutchings, 757 F.2d at 14. For these reasons, appellant's first assignment of error is found well- taken."

In accord are, e.g. *Dickinson v The State of Texas*, 685 S.W.2d 320 (1984); *State vs Russell*, 69 Wash. App. 237, 848 P.2d 743 (1993).

The Ohio Hearing Panel's Report specifically found that the respondent, Linda Cook, failed during her hearing to show remorse.

> "Respondent has totally failed or refused to acknowledge any wrongful nature of her conduct."

Board Report and Findings App. G, pg. 66a.

Ms. Cook has requested both the Hearing Panel and the Supreme Court to hold a bifurcated hearing so that she would not have to demonstrate remorse in her case in chief. App C, pgs. 32a-33a. Those requests were denied by the Hearing Panel and by the court. Both referred to the "failure to show remorse" in recommending (by the Hearing Panel) and then imposing (by the Supreme Court) her disbarment. Imposing that procedural burden on a person seeking to preserve her vocational livelihood is a denial of Due

Process. Attorney disciplinary proceedings have long been recognized as quasi- penal. Hence, the principle of Due Process in criminal proceedings, that a person cannot be penalized for claiming innocence, applies as well in professional disciplinary proceedings. See *In Re Oliver*, 333 U.S. 257; 68 S. Ct. 499; 92 L. Ed. 2d 682 (1947); cited with approval *In re Ruffalo*, 390 U.S. 544; 888 S. Ct. 1222, 20 L. Ed. 2d 117, 43 Ohio Op.2d 459 (1968).

2. IS DUE PROCESS VIOLATED BY DETERMINATION OF GUILT SOLELY ON DISBELIEF OF THE ACCUSED'S TESTIMONY, WHERE ALL OTHER EVIDENCE SUPPORTED INNOCENCE OF THE ACCUSED LAWYER?

Ms. Cook was the only witness who testified in the case presented by the Toledo Bar Association to the Hearing Panel, App. G, pg. 65a. She emphatically denied the alleged wrongdoing. All testimony offered on her behalf corroborated her denial. Nevertheless, both the Hearing Panel, App. G and the Ohio Supreme Court, App. C, pg. 24a, despite there being no testimony supporting the allegations, found her guilty on the grounds that her testimony was not credible. This too is a denial of Due Process: It destroys the possibility of any effective appellate review of the sufficiency of the evidence, as Judge Learned Hand long ago observed. See *Dyer v McDougall*, 201 F.2d 265, 269 (2nd Cir. 1952).

Moreover, the "disbelief" in Ms. Cook's testimony was a conclusion of the Hearing Panel, not of the tribunal having sole authority to make a

determination of guilt- the Ohio Supreme Court. The proceedings prior to the Supreme Court result in recommendations, not determinations. See Rule V, Section 8(A) of the Rules of the Supreme Court for the Government of the Bar of Ohio also discussed below. The tribunal authorized to impose discipline, the Supreme Court of Ohio, never saw the witnesses whose testimony was the subject of the disbelief. The Supreme Court, as the adjudicative body, simply took a negative credibility evaluation by the hearing officers, and accorded it sufficient proof of the misconduct that was denied by all the testimony.

Sustaining a finding on the basis of disbelief of contrary evidence is bad enough in civil cases. In quasi-penal cases, such as the professional disciplinary proceeding, it is a denial of Due Process.

Ohio as a matter of local law affords judicial consideration of bar association disciplinary recommendations. But sustaining a disciplinary conviction without any positive evidence effectively denied judicial consideration to Ms. Cook.

In the instant case, there were no other testifying witnesses and a complete lack of evidence in support of the Hearing Panel's findings, which were eventually adopted by the Ohio Supreme Court. App. C, pg. 19a. This practice was held unsupportable by this court in *National Labor Relations Board vs Walton Manufacturing Co. et al*, 369 U.S. 404; 82 S. Ct. 853; 71 L. Ed. 2d 829 (1962) and cases cited therein.

3. IN A LAWYER DISCIPLINARY PROCEEDING IS A LAWYER ENTITLED TO A HEARING ON OBJECTIONS TO THE HEARING PANEL'S RECOMMENDATIONS IF THE STATE SUPREME COURT RULES PROVIDE FOR THAT HEARING?

The Rules of the Supreme Court of Ohio provide that an attorney respondent may file with the Court Objections to the report and recommendation of the Board of Governor's hearing panel. Rule V Section 8 (B) and that the Supreme Court will hold a hearing on those objections Rule V Section 8 (D). Only after such a hearing will the Supreme Court enter its decision. Rule V Section 8 (D).

Ms. Cook filed objections, App. H, pg. 70a and a hearing was scheduled by the Supreme Court of Ohio in its Court in Columbus, Ohio. The day before that hearing there was a winter storm that closed the Columbus, Ohio Airport, the expressways in both Ohio and Michigan and the Detroit Metropolitan Airport. There was no way for either the Respondent, Linda Cook, or her attorney to get to Columbus for the hearing.

Ms. Cook filed by fax an Emergency Motion to Adjourn and Reschedule the hearing, App E pg. 43a which was denied by the Ohio Supreme Court App. F, pg. 49a. That court went on to adopt the recommendation and report of the hearing panel and render its decision disbarring Linda Cook App. C, pg. 19a one Judge dissenting due to a lack of Due Process App. pgs. 35a-37a.

As a matter of Federal Due Process, it would appear that Ohio must provide review of Hearing Panel recommendations. Under Ohio law, the Hearing panel's determination is only a recommendation, not an adjudication. Rules of the Supreme Court for the Government of the Bar of Ohio, Rule V Section 8(A) et. seq. Its recommendations are reviewed by the Board of Governors of the Ohio State Bar and, if endorsed (as they were in this case) are submitted to the Ohio Supreme Court. Rules of the Supreme Court for the Government of the Bar of Ohio Rule V Section 8. Hence, the proceeding before the Ohio Supreme Court is a plenary first-instance address of the case, because previous proceedings are only recommendations.

The denial of a professional license is a matter in which "some kind of hearing" is required as a matter of Due Process. See in *Re Ruffalo*, supra; *Goldberg vs Kelly*, 394 U.S. 971, 89 S. Ct. 1469, 22 L. Ed. 2d 751 (1969). The Ohio Supreme Court's refusal of an oral hearing, when its own rules proscribe such a hearing, is a denial of fundamental fairness, a denial of the only hearing available before a tribunal competent to adjudicate the matter. As the dissenting Justice of the Ohio Supreme Court attested, App. C, pgs. 35a-37a, it was a denial of Due Process.

It is respectfully submitted that Certiorari could be granted on the papers, and the case remanded to the Supreme Court of Ohio for reconsideration in light of In re Ruffalo, the Ohio decision in *State vs Ambriez*, supra, the deficiency of proof identified in *Dyer v McDougall*, and other authorities cited above.

CONCLUSION

That the Petition for Writ of Certiorari should be granted.

Respectfully submitted,

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APPENDIX

APPENDIX A

THE SUPREME COURT OF OHIO

Case No. 2006-1994

[Filed September 26, 2007]

Toledo Bar Association	)
	)
v.	)
	)
Linda S. Cook	)
	)

RECONSIDERATION ENTRY

It is ordered by the Court that the motion for reconsideration in this case is denied.

/s/
THOMAS J. MOYER
Chief Justice

APPENDIX B

THE SUPREME COURT OF OHIO

Case No. 06-1994

[Filed September 20, 2007]

Toledo Bar Association,	)
Relator,	)
	)
v.	)
	)
Linda S. Cook,	)
Respondent.	)
	)

RESPONDENT'S MOTION FOR RE HEARING AND RE CONSIDERATION

Now comes the above named Respondent, Linda S. Cook, by her attorneys, Golden and Kunz, P.C. and moves this Court to Reconsider and Rehear this case in order to avoid a substantial miscarriage of justice and in support thereof states:

(It should be noted by all concerned that the fact that Respondent does not raise her argument that she has been denied due process is not evidence of abandonment of that issue, but rather the recognition that violation of due process is a federal issue best

raised in a federal forum in view of this Court's decision.)

Respondent does raise the question of why this Court could not have delayed submission of the case for only a few days in order to give counsel for Respondent an opportunity to attend oral argument, once the airports reopened, and attempt to clear up a lot of misconceptions, especially in view of this most severe discipline.

1. At the hearing before the Board of Governors on Grievances, the Relator called only one witness in order to establish those matters it complained of in this case. That witness was Linda S. Cook (See hearing transcript commencing at pg 20.). Respondent's testimony did not support the allegations against her. If the Board and this Court do not believe the testimony of Linda Cook, the record is totally absent other testimony in support of Relator's allegations.

2. Since this court has repeatedly indicated, by rule and by opinion, See: *Cuyahoga County Bar Association vs Griffin*, 112 Ohio St. 3d 550, 2007 Ohio 810; 862 N.E. 2d 94 (2007), *Warren County Bar Association vs Marshall*, 113 Ohio St. 3d 54; 2007 Ohio 980; 862 N.E.2d5190(2007) that the burden of proof is on the Relator and that burden is the standard of clear and convincing evidence. A fair reading of the transcript of the hearing before the Board would disclose that there is no clear and convincing testimony,

there is no testimony in support of the findings of the Board or of this Court.

3. Further, a fair reading of this Court's decision would indicate that this Court looks to the Respondent to prove her innocence rather than placing the burden on the Relator. If the Court is intending to shift the burden of proof to the respondent in disciplinary cases, this Respondent and her counsel are entitled to some advance notice so that a fair hearing can be conducted and the proper proofs made.

4. A great part of Respondent's testimony is corroborated by testimony of other witnesses called on her behalf. If this Court and the Board do not believe Respondent, they must not believe any of the other witnesses either, which leaves the Court with a record upon which it can make no findings unless it shifts the burden of proof to the Respondent.

5. If it is the Court's intention to shift the burden of proof to the Respondent, Linda Cook, she should be entitled to a new hearing; one at which she knows she has to go forward with the proofs and not rely on the fact that the Relator cannot sustain its burden.

6. Neither this Court nor the Board can make inferences or determine facts for which there is no record support. This Court, however, has done exactly that and the result is a tragic miscarriage of justice.

7. An examination of the record indicates that the findings of fact of both the Board and this Court are not supported by any record testimony. For example (This Court's findings are listed below in bold letters):

   a. **Respondent advised the client that she could qualify for Medicaid coverage by donating the farm and divesting herself of this asset three years before she applied for Medicaid. Decision, Paragraph 10.**

      Respondent testified that the client wanted to transfer her farm to the church immediately. As any attorney should, she was concerned should the client ever go into a nursing home she would have used up her assets. It was not respondent's idea to donate the farm to the church. The client wanted to immediately transfer the farm to the church. Ms. Cook, Respondent, was concerned that if she did so and later needed care she would not have the funds for that care:

      "Q Did that differ, ma'am, from the, from her intentions that were expressed in your initial meeting with her?
      "A No, that was what she wanted to do with all of her stuff except the farmland.
      "Q What did she want to do with the farmland?
      "AThe farmland was to be, she actually started out when we met the first time she

wanted to leave the farm to the church on her death to be used for church purposes with some restrictions.

"Q Which was retention of a life estate?

"A Well, it was more than that. Originally was to go on her death so there, it would not include a life estate, she wanted to make sure that that got to her. We discussed putting it in a trust, having that happen. We also discussed the fact that if she became ill and went to a nursing home that the property could be, she could be forced to sell that property in order to pay the nursing home bill."

Hearing transcript pg 34-35.

"A I raised the issue to Esther because she was so adamant, she wanted to make sure that the farm ended up in the hands of the church. And if she simply said I leave it on death and she became ill and went to the nursing home, typically what would happen first, you would spend the money and then you would start selling off or completely sell the farm and use that money to pay the nursing home.

"Q Did you explain this to her?

"A Yes.

"Q How was the issue resolved?

"A Well, originally when she left the office she was going to do a Trust and she was going to put the real estate and everything in the Trust. And then she, because I said you can do this or you can do this, I gave her

options. Then she called back and said she didn't want to do the Trust, she just wanted to do the deed. She wanted to make sure the land was protected.

"Q When you say she wanted to do the deed, what did she want to convey to whom and when?

"A She said she wanted to deed the property to a person so she had a three year look back and then go from there to the church.

"Q Now, was there any discussion between you and Esther Benfer as to who this person would be that she would deed the property to?

"A Yes, there was.

"Q What was the discussion?

"A Well, we talked about her family and basically she had some very, very distant cousins she had no contact with. So, she didn't have any family; no children, no husband. She didn't want to leave it to just the family. She had, we looked back and talked about the people she had originally made as trustees. She did not want to do that and then she asked me if I could do this for her and I agreed to do that.

"Q Now, specifically what did you agree to?

"A I agreed to do a deed from her to me.

"Q How would that get the property into the hands of the church?

"A Well, I was going to then after the time period went by, if we didn't need to section off and sell that farm for any reason to pay for her care, then I would deed that property to the church.

Q Did you explain this to Esther Benfer?
"A Yes, I did.
"Q Did she have any objection?
"A No.

Hearing transcript pg 152-1 53

Somehow both the Board and this Court come to the conclusion that the deeds in question were backdated deliberately by the respondent. Both the Board and this Court seem to ignore the fact that backdating the deeds would accomplish nothing as far as Medicaid is concerned for the simple reason that Esther Benfer had too much money and assets to qualify for Medicaid in 2001. She would have to somehow spend over $150,000.00 and not acquire any assets with the spending in order to qualify for Medicaid. Doing so and thus supplying a reason for deliberate backdating is ridiculous. There was no benefit to the Respondent and none to her client. These facts seem to be ignored because they do not support the findings of the board and this Court.

b. This Court held that Linda S. Cook falsified the deed to an elderly client's farm.

The testimony indicates that she neither prepared the deed nor ordered it prepared and did not know of the error in the dating:

""Q But you already knew that the date was incorrect?
"A No, I did not.

"Q You knew the date was incorrect, ma'am, didn't you, ma'am, when the deed came back to you?
"A No, I didn't, I never looked at the date. I did not know the date was incorrect.
"Q When the second deed, Deed B, was returned to you, did you or did you not know that the date on the deed was incorrect?
"A No, I did not know it."

Hearing transcript pg 41

"A Well, I believe that somebody started this deed and they swapped the names, I think they pulled up the deed of some other clients, started it to swap the names and things and then Esther called and said I don't want to do the trust, and they stopped. I don't think they completed it.
"Q Now, does the fact that the 1998 date is on that deed have any connection or relationship to it being on Deeds A and B?
"A I don't think, I think that when Esther came in the office they could not find the one that I proofed, they pulled this back up saying here is the deed. They went in and filled in the line above Esther and directed what needed to be corrected and let her sign it. I think that's what happened. I believe that to be what happened."

Further, her testimony is corroborated by the testimony of Wendy McKay Warnke who testified that no one noticed that the deed dates were incorrect and that the dating was in error, a mistake.:

> "Q When you signed as a witness on this document did you notice the date of May 20, 1998?
> "A No, we didn't. I was witnessing that Esther was signing it, I assumed that it was already pre-done and pre- approved and--"
>
> Hearing transcript pg 13 of Friday August 18, 2006

Ms. Warnke further testified:

> "Q If I remember correctly, Ms. Warnke, your testimony with regard to Deed A that carried a date of, I believe it's may 20, 1998 was in error, a mistake?
> "A Yes."
>
> Hearing transcript pg 37 of Friday, August 18, 2006

c. Respondent has no credible explanation for when she received, as trustee, title to her client's farm.

Respondent testified at length in regard to that transfer of title. However, this Court, not believing that testimony has made a finding that she had no credible explanation. This Court thereby implies that if she did have a further or different explanation, it was her duty to come forward with that explanation. In so holding, this Court has shifted the burden of proof from the Relator to the Respondent. Under the rules which this court has adopted, the Respondent has no duty to come forward, has no duty to explain

anything. It is the burden of the Relator. Ohio Gov. Bar.R.V Sect. 6(H)

d. That a member of her staff had inadvertently misdated Deed A through a typographical error.

There was no "typographical error". The staff in creating the deed cloned it from another deed they brought up on the computer but failed to change the dates when they changed the names and property description in order to create the new deed. Respondent testified that she did not prepare this or any of the other deeds and did not order it or the others prepared with those dates:

"Q Did you proof the deed?
"A Yes, I had, I had proofed the deed.
"Q Now, what do you mean by proof. What do you do?
"A When I have a file, you know, I proof all the documents. So, I would pull up my personal information and the information that we have to, I always check spelling, I go through and make sure the names are correct, legal description s are correct, that the dates are correct.
"Q If you did that how do we end up with a deed that has a date of 1998 in it?
"A That I can only surmise, I'm guessing when Esther came in Nancy Cunningham, whoever, couldn't find the deed, they went to the system, printed a deed that had been

done previously. She went into the system and found the deed that had been done wasn't there and went in and made corrections. So, she thought it was back to being corrected and printed it.

"Q so you will admit to me and to the panel that the 1998 date should not have been in this deed?

"A That's correct.

"Q And as far as you knew at the time you stopped proofing and working on these documents, it was not?

"A Correct."

Hearing transcript pg 154-155

e. Her previous inconsistent accounts of when Deed A was truly executed show that, assuming she knows what the truth is, she is incapable of telling it.

Linda Cook testified at great length about the drafting and execution of all of the deeds. Other witnesses also testified that the dates on the deed were a mistake. Based on that testimony, how can the Court come to the conclusion that the testimony is untrue. There is no support for such a finding and no inconsistency between witnesses. The Court fails to take into consideration that the witness, Respondent, is testifying to events that took place five years previous to her testimony. Certainly the Court can and should take that into consideration. No witness lied to this court or to the Board. A lie or misrepresentation is a knowing untruth.

In the preparation of the Answer to the grievance, which Relator served upon Respondent, Respondent was able to recall only what was obvious from an inspection of the long closed file. On initial inspection it was thought that the 1998 dates were correct and the response was made assuming that fact. It was not until the Toledo Bar filed its formal complaint that things began to be recalled that indicated that the deed dates were incorrect and that those incorrect dates were neither ordered nor prepared by the Respondent. There was absolutely no intent to deceive or file an untruthful response.
See hearing transcript pg 23-24, 41
When the change of the word "trustee" to "married" on the deed was made, it was made to correct a simple error. There was no trust.

See hearing transcript pg 45

f. That Respondent received her client's farm as a gift in 1997 as indicated on her tax return. Decision, paragraph 18.

Linda Cook did what was necessary to insure that she wasn't taking something that had value to her client. She testified that she contacted a CPA. She consulted with Esther and at the time there was no attorney client relationship with Esther Benfer. See hearing transcript pg 158. In addition it was satisfactorily brought to her attention by the preparer of Esther Benfer's tax return that Esther did not have enough

income to even have to file a tax return. She could not use the deduction. See hearing transcript pg 162. There was no way she could have used the deduction, but if she could, Ms. Cook would not have taken it. See hearing transcript pg 163. Esther knew she couldn't use the deduction and gave Respondent a copy of her tax return which the preparer had written " no need to file". See hearing transcript pg 171.

In this finding, the Board and this Court overlook the testimony of Respondent's tax expert witness indicating that that date of 1997 is perfectly proper and indicates a "tacking" of the time that Respondent's client also held the farm and is perfectly proper. The expert testified:

"Q So, you are saying that the tax deduction taken on Ms. Cook's tax return between 2000 and 2004 are a proper legal charitable deduction by Ms. Cook to the church?
"A Yes.
"Q And you base that on the fact that Ms. Cook had title to the property?
"A I base that on the fact that the 2000 return contained in(sic) 8283 which clearly disclosed to the IRS that the transaction occurred. If the IRS had an issue with it they would have audited that return. They did not audit it. And since the 8283 is, gets reviewed by an individual not by a computer."

> Hearing transcript pg 76 Friday, August 18, 2006

This expert testified further in response to questions by the Hearing Panel:

> "Q Okay, And what significance would there be, if any, if title to this property were acquired in, instead of December of 1997 in May of 1998?
> "A None.
> "Q And what difference would there be if title to this property were acquired in June of 2000?
> "A Same answer."

> Hearing transcript pg 91, Friday August 18, 2006

This Court has issued disciplinary orders against attorneys licensed to practice in the State of Ohio who had caused more actual harm to their clients than any actual or potential harm caused by Respondent and has not disbarred those attorneys. The decision of this court to disbar respondent is far too severe and a miscarriage of justice.

This Court and the Board of Governors have stated in their Opinions that they do not believe the testimony of the Respondent. Respondent contends that her testimony is truthful and does describe exactly what happened in this case. Is it possible that the Board and this Court are incorrect in their findings? Should this court entertain that possibility?

4. Respondent readily admits that she was negligent in the handling of her client's estate in two respects:

a. Attempting to help her client, who had no family, in such a way that she became a "player" in her client's estate plan.

b. Being negligent in not adequately inspecting the documents prepared by her office and relying upon staff, including other licensed attorneys, to make such inspection.

During the pendency of this matter Respondent's entire office procedure and personnel have been altered to see that these types of errors do not reoccur. Respondent now sees that her desire to aid her clients should not include her becoming a part of her client's plans even if there is no one else to act. Neither of these admittedly negligent acts warrant disbarment.

8. Both this Court and the Board consider evidence and argument offered by the Relator from 2003 through 2004, a time period far beyond the scope of the formal complaint and not charged. In so doing, over the objection of counsel, due process is violated. Prejudicial testimony is heard which had no business being considered by the board or by this court.

> See this Court's decision paragraph 26 through end.

It may well be that this Court is convinced that the Respondent deliberately backdated the deeds in question, but such state of mind of the members of this

court is visceral and not based on evidence or testimony.

9.Disbarment is an overly harsh discipline and, although this Court seeks to express otherwise, not sanctioned by the ABA Sanctions on Lawyer Discipline for the following reasons:

a. If we assume, for the sake of this argument, that the deeds were deliberately back dated, the back dating neither causes the client any harm nor has it any potential to cause the client any harm. Further, backdating does not cut the waiting period for Medicaid to a shorter time for the reason that the client has too much in the way of assets in 2001 to apply for Medicaid and further, has no need for Medicaid. Certainly these facts were known by Respondent and mitigate against the interpretation of the facts by both the board and this Court

b. The deed from the client to the respondent was with the client's obvious consent for she signed the deed. It only reflects the Respondent's desire to help her client for she had no one else she could rely upon. This simple act did not harm the client, was done with informed consent (there being no proofs to the contrary).

c. This Court takes a giant leap into fraud and deceit of the Respondent in order to justify its discipline, but that fraud and deceit comes only from the Board and Court's position that they do not believe the respondent's account of what occurred. There is no proof of &aud or deceit.(Who was going to be or was defrauded?)

IN SUMMARY:

Is it possible that this Court was wrong?

/s/_____

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APPENDIX C

THE SUPREME COURT OF OHIO

Case No. 2006-1994

[Decided July 11, 2007]

Toledo Bar Association	)
	)
v.	)
	)
Cook	)
	)

ON CERTIFIED REPORT
by the Board of Commissioners on Grievances and Discipline of the Supreme Court, No. 05-047.

Per Curiam.

{¶ 1} This court admitted respondent, Linda S. Cook of Sylvania, Ohio, Attorney Registration No. 0061876, to the practice of law in Ohio in 1993. On November 6, 2002, we suspended respondent's license to practice for one year, staying six months of the suspension on conditions, because she violated the Code of Professional Responsibility by preparing a will for an unrelated client that named her siblings' corporation as a beneficiary. *Toledo Bar Assn. v. Cook*, 97 Ohio St.3d 225, 2002-Ohio-5787, 778 N.E.2d 40.

Respondent was reinstated on August 25, 2003. *Toledo Bar Assn. v. Cook*, 99 Ohio St.3d 1233, 2003-Ohio-4757, 795 N.E.2d 675.

{¶ 2} The Board of Commissioners on Grievances and Discipline recommends that we now permanently disbar respondent based on findings that she committed professional misconduct by first falsifying the deed to an elderly client's farm, then transferring the property to herself, then giving the farm to her client's church, and then taking charitable deductions for the gift. On review, we overrule respondent's objections, adopt the board's findings of misconduct, and hold that disbarment is appropriate.

{¶ 3} In Count I of the amended complaint, relator, Toledo Bar Association, alleged that in 2001, to qualify her client for Medicaid, respondent backdated a deed to 1998 to make it appear that the client's farm had not been in her estate for three years. Count I charged that respondent had thereby violated DR 1-102(A)(4) (prohibiting conduct involving dishonesty, fraud, deceit, or misrepresentation) and 1-102(A)(6) (prohibiting conduct that adversely reflects on a lawyer's fitness to practice law). In Count II, relator alleged that respondent afterward gave the farm to the client's church, in accordance with the client's wishes, and then took the farm's value as a charitable deduction off her own federal income taxes for five years. Count II charged that respondent had thereby violated DR 1-102(A)(3) (prohibiting illegal conduct involving moral turpitude), 1-102(A)(4), 1-102(A)(6), 5-101(A)(1) (prohibiting a lawyer from accepting employment in which the lawyer's independent judgment on the client's behalf may be affected by the

lawyer's own interests), and 5-104(A) (prohibiting a lawyer from transacting business with a client when their interests compete).

{¶ 4} A three-member panel of the board heard the cause on August 17 and 18, 2006. The panel made findings of fact and conclusions of law and recommended disbarment. The board adopted the findings of misconduct and recommendation.

{¶ 5} Respondent objects to the board's report, arguing first that no clear and convincing evidence supports the findings of misconduct. Respondent next argues that the board found misconduct not charged in the complaint and also that the panel should have heard evidence in mitigation and aggravation of the sanction separately from the evidence of misconduct. Finally, respondent argues that the recommended sanction is too severe.

I. Objections to the Findings of Misconduct and Notice

A. The Evidence Is Clear and Convincing

{¶ 6} Respondent's client, who was born in 1911 and has no immediate family, consulted respondent on or before May 8, 2001, about estate planning. The date of their first consultation is uncertain, as is the timing of other events in this case, because respondent's recollection differs from contemporaneous documentation. In this instance, for example, respondent claims that the client began consulting her about estate planning in May 2000; however, she did not open a case file for the client until May 8, 2001.

{¶ 7} Between May 8, 2001, and June 8, 2001, respondent apparently prepared five documents for the client: (1) a revocable living-trust agreement, (2) a will, (3) a comprehensive durable power of attorney, (4) a durable special power of attorney, and (5) an assignment of tangible personal property. Respondent also provided an invoice for her services, which listed $2,000 in legal fees and $20 in costs for recording instruments. Oddly, however, respondent demanded payment in the invoice of only "one cake" for her work.

{¶ 8} The client signed the five estate-planning documents on the date shown on the invoice — June 8, 2001.

{¶ 9} The client's living trust named respondent and the client as cotrustees. The will named respondent as the personal representative and respondent's law firm, in which respondent and her sister are partners, as the successor personal representative. The comprehensive durable power of attorney named respondent as the client's agent with authority to exercise the enumerated powers, and the durable special power of attorney named respondent as the client's attorney-in-fact. The assignment of tangible personal property transferred all of the client's "jewelry, clothing, household good furniture, furnishings and fixtures, chinaware, silver, photographs, works of art, books, boats, automobiles, sporting goods, farm machinery, livestock, artifacts, and all other tangible articles of household goods or personal use" to the living trust under respondent's supervision.

{¶ 10}Respondent's client owned a farm valued in 2001 at $225,000. The client wanted to donate the farm to her church, but she also wanted to live on the farm as long as her health permitted and to afford any residential nursing care that she might eventually need. Respondent advised the client that she could qualify for Medicaid coverage by donating the farm and divesting herself of this asset three years before she applied to Medicaid for nursing-home care.

{¶ 11}Respondent presumably offered this advice on the authority of former Ohio Adm.Code 5101:1-39-07(C). 1989-1990 Ohio Monthly Record 1167, effective April 1, 1990. In 2001, as today, Ohio Adm.Code 5101:1-39-07 penalized a Medicaid applicant who attempted to qualify for coverage by reducing his or her own resources through an "improper transfer" of legal or equitable interests at less than fair market value within specified periods. See Ohio Adm.Code 5101:1-39-07(B)(5). The rule restricts benefit eligibility depending on the nature and timing of the transfer and establishes "look-back" periods for deciding which transfers are suspect. Id. Respondent testified that her client would be at risk for some period of ineligibility if she transferred her farm to an individual within three years prior to filing an application for Medicaid. She said the same risk loomed if the client transferred the farm to a trust within five years of the application.

{¶ 12}Having so advised her client, respondent prepared a quitclaim deed giving title of the client's farm, and reserving a life estate in the client, to herself as trustee of the client's living trust. Respondent insists that the gift was her elderly client's idea. The

deed transferring the farm to respondent as trustee — "Deed A" — was recorded on July 12, 2001. Deed A bears an attestation and signature date of May 20, 1998.

{¶ 13}Respondent eventually admitted that May 20, 1998, was not the date on which Deed A was actually executed. She had no alternative. The notary public who authenticated the deed did not receive her commission until 2000.

{¶ 14}Respondent has no credible explanation for when she received, as trustee, title to her client's farm or how Deed A came to be dated years before the client sought her services. She claimed during the panel hearing that a member of her staff had inadvertently misdated Deed A through a typographical error, that Deed A had really been executed sometime in June 2000, and that she did not realize the mistake until late in the disciplinary investigation. If Deed A had been executed in June 2000, however, the transfer would have occurred one year before the client's living trust and respondent's trusteeship even existed. When asked about this non sequitur, respondent dismissed the reference to her trustee-asgrantee status as simply another mistake in the deed.

{¶ 15}The panel and board did not believe that respondent misdated Deed A out of carelessness, and neither do we. Her explanations for this irregularity and others are convoluted and far-fetched. Moreover, her previous inconsistent accounts of when Deed A was truly executed show that, assuming she knows what the truth is, she is incapable of telling it.

{¶ 16}As a first inconsistency, we have before us this unusual written statement, which respondent prepared and had her client sign on August 30, 2001:

{¶ 17}"I * * * give Linda S. Cook permission to write off on her income tax return the gift of real property that I gave her in *1998* and she gave to the Metamora United Methodist Church on December 25, 2000." (Emphasis added.)

{¶ 18}Respondent's second inconsistent statement appears in her 2000 federal income tax return. Respondent completed this return on October 14, 2001, and it reflects the first of five charitable deductions that respondent attributed to donating her client's farm to the client's Methodist church. Respondent represented on the return that she had received title to the farm as a gift in *December 1997*.

{¶ 19}Third, in responding to questions raised early in relator's investigation, respondent approved and signed an August 18, 2004 letter in which she confirmed that she had received title to the client's farm as trustee on *May 20, 1998*.

{¶ 20}Respondent's other activities during 2000 and 2001 cast further suspicion. For example, at some point after Deed A was recorded, respondent obtained a copy of the recorded deed, crossed out the designation of "Trustee" that appeared after her name as grantee, and then typed in the word "married" above it. In explanation to the panel, respondent claimed that she had changed Deed A because she had mistakenly given the farm to herself as trustee, rather than to herself personally in accordance with her

client's wishes. Respondent, who thought she might have undertaken this curious course of action in August 2001, did not have her client re-execute the document, and she supposedly did not notice the inaccurate May 20, 1998 transfer date. She instead simply re-recorded the altered deed — "Deed B" — on September 10, 2001.

{¶ 21} Respondent apparently believed that she had transferred valid title to herself individually from her client with Deed B. At the time of that attempted transfer, however, title arguably still resided, as a result of Deed A, in respondent as the living-trust trustee.

{¶ 22} Earlier, in another example of equally questionable conduct, respondent at some point prepared another quitclaim deed, this one purporting to transfer title to her client's farm from respondent, as a married individual, to the Metamora United Methodist Church and reserving a life estate for the client. This deed — "Deed C" — and an allied land-transfer contract between respondent and church trustees purport to have been signed, witnessed, and notarized on December 25, 2000.

{¶ 23} December 25, 2000, corresponds to the year of the tax return on which respondent took the first deduction for the charitable donation of the farm. Oddly, however, that date precedes the July 12 and September 10, 2001 recording dates of Deeds A and B, the deeds from which respondent supposedly obtained her personal interest in the farm. Moreover, respondent conceded that the date shown on the land contract was also inaccurate.

{¶ 24} Again trying to explain, respondent claimed that the land contract had actually been executed sometime after she established her client's June 8, 2001 trust, although she again could not recall exactly when. Respondent testified that she had at the time arranged for the church trustees to date their signatures Christmas Day 2000 to match the date on the deed. After Deed C was executed, respondent maintains that she kept the deed at her law firm and, with no more documentation of her client's intent, simply told a colleague to give the deed to the church if her client died and "in case anything happened" to respondent.

{¶ 25} Deed C was not recorded until December 13, 2001. From this date until the beginning of 2004, respondent had no further contact with her client. For the tax years of 2000, 2001, 2002, 2003, and 2004, however, she took a total of $225,000 in federal income-tax deductions for donating the client's farm to the client's church. It was to obtain proof of her client's informed consent for this tax benefit that respondent prepared and had her client sign the August 30, 2001 statement about giving respondent the farm in 1998 and allowing respondent to take the corresponding tax deductions. Also to prove the validity of these deductions, respondent included with her 2000 tax return a copy of Deed C.

{¶ 26} In late December 2003, while the client was, in respondent's words, "taking care of all of her own affairs," a local adult-protective-services agency received a report about unsafe conditions in the client's home. The agency asked respondent about the situation, and in January 2004, respondent contacted

her client, she claims, "to see about paying her bills in January." On January 23, 2004, however, respondent prepared and had her client sign another statement, this one confirming that the grantee on Deed A "should have been and is LINDA S. COOK, married," rather than "LINDA S. COOK, Trustee." Only after respondent obtained this statement from her client and her client had been hospitalized did respondent, in March 2004, ask doctors to evaluate the client's ability to live unassisted.

{¶ 27}On April 20, 2004, attorney Jeffrey L. Robinson hand-delivered a letter to respondent, advising that he had been retained to succeed her as the client's counsel. He referred to respondent's representation as "perplexing" and included the client's revocation of respondent's power of attorney. Robinson inquired about the status of the client's farm and certain personal property that respondent had removed. He also forbade respondent to contact the client.

{¶ 28}Respondent disregarded Robinson's letter. On the day she received it, she petitioned a Michigan probate court to appoint her the client's guardian, alleging the client's mental and physical incapacity. In the petition, respondent represented that she had the client's power of attorney and was the client's attorney. Respondent completed the petition by signing for her sister as her own attorney. The next day, despite the client's probable incapacitation, respondent went to the Michigan nursing home where her client was then living and had the client sign another "Comprehensive General Durable Power of Attorney," a living will, a health-care power of attorney, and a designation of

patient advocate. Respondent's client was declared incompetent shortly afterward.

{¶ 29}In September 2, 2004, at Robinson's behest, respondent executed a fourth deed, this one transferring title as trustee of her client's first living trust with the accompanying life estate in the client. Robinson insisted on this deed to ensure that the church obtained clear title.

B. Respondent Violated the Disciplinary Rules Cited in the Complaint and Had Ample Notice of the Charges

{¶ 30}The false date and grantee designation on Deed A were not innocuous mistakes. Respondent's account is simply not credible, and the employee-cousin she presented at the panel hearing to corroborate her story did not have enough knowledge to contradict all the inconsistencies in respondent's testimony and the various instruments she prepared. In fact, the cousin created a new inconsistency – she testified that respondent knew of the inaccurate date on Deed A in 2001 and thus did not discover it, as respondent now claims, in 2004 during relator's investigation

{¶ 31}We are convinced that respondent intentionally backdated Deed A and then changed the grantee designation to create Deed B and the appearance that her client had given the farm to an individual before the three-year look-back period for Medicaid eligibility. Then, on the theory that she had taken care of her client's long-term medical and living expenses, respondent took advantage of her client's

assets by claiming deductions for the year 2000 and afterward for a charitable contribution that we can only conclude occurred sometime after May 8, 2001. Finally, as a cure-all, respondent obtained transparent statements from her increasingly physically and mentally compromised client as proof of her client's purported consent.

{¶ 32}Respondent acted dishonestly, she did not exercise her professional judgment independently of her own interests, and she certainly has not shown that she obtained her client's informed consent to her self-dealing. Rather, she gamed the system. Then, years later, when authorities inquired into the client's desperate living conditions, respondent went to her client to initiate guardianship proceedings and, incredibly, gained the client's signature on another supposedly exculpatory consent instrument.

{¶ 33}Respondent's arguments in defense of her self-dealing are remarkable in their complete indifference to her fiduciary duties to this client. She has the audacity to argue that her machinations did no harm, explaining that the client had too little income to take the deductions for the generous charitable contribution of her farm. Respondent suggests that she actually helped her client by seeing that her charitable deduction did not go unused.

{¶ 34}Respondent further asserts that by the time she took the first deduction in October 2001, she no longer owed any duty to her client because their attorney-client relationship had ended. Respondent makes this argument notwithstanding that she never terminated her fiduciary capacities under the

instruments she prepared and that in August 2004, she stepped in to prepare the petition for her client's guardianship and to try to revoke Robinson's power of attorney. Moreover, beginning in January 2004, respondent billed her client not only for her services as trustee, but also for legal work — in particular for preparing the guardianship petition that she filed on April 20, 2004, and for the comprehensive general power of attorney, living will, health-care power of attorney, and designation of patient advocate that she had her client sign on April 21, 2004. All occurred after her client had revoked respondent's power of attorney and had requested no further contact.

{¶ 35}Finally, respondent relies heavily on an exhibit that she claims is the preliminary draft of Deed A and supports her assertion that her client was considering giving her the farm as early as May or June 2000 and made delivery of the deed to it in December 2000. The year is important to respondent because she took her first charitable deduction for her contribution on her 2000 federal income tax returns. Respondent introduced this exhibit for the first time at the panel hearing, despite relator's previous discovery requests for all her records concerning this client. To authenticate the exhibit, respondent presented her nephew, also one of her employees, who allegedly discovered the document in an old electronic file. The exhibit is a partially completed quitclaim deed, also dated May 20, 1998, that grants the client's farm, for no consideration, to "LINDA S. COOK, Trustee, or her successors in trust, under the [client's] Living Trust, Dated June 14, 2000."

{¶ 36}Respondent offered this exhibit to corroborate her claims that Deeds A and C were actually executed in 2000, no doubt in acknowledgement that no other record reliably documents the dates of these deeds. Given how respondent was suddenly able to produce it, however, we also find this record suspect. Moreover, the nephew testified that the dating of an electronically generated document is easily altered, and the date on this newly introduced, incomplete deed could not be verified.

{¶ 37}On review, we find ample proof of respondent's misconduct and nothing to suggest that she received inadequate notice of the charges against her. We find that respondent violated DR 1-102(A)(4), as specifically charged in Count I, for committing acts of dishonesty and deceit and violated 1-102(A)(6) because these acts reflect egregiously on a lawyer's fitness to practice law. We find that respondent violated DR 1-102(A)(3), 5-101(A)(1), and 5-104(A), as specifically charged in Count II, by taking advantage of her fiduciary relationship with her client and falsely claiming that she donated her client's farm in 2000. Respondent's claims of insufficient evidence and lack of notice are therefore overruled.

II. Objections to the Hearing Procedure and Sanction

A. Respondent Has Not Shown that She Is Entitled to a Bifurcated Hearing

{¶ 38}Respondent also argues that the board should have conducted the underlying panel hearing in two proceedings, with a separate hearing to determine

the sanction for her misconduct and to weigh relevant mitigating and aggravating factors. She analogizes the disciplinary process to a capital-murder prosecution, arguing that the process unfairly precludes a lawyer from first pressing a defense and then choosing to show remorse in mitigation of the offense. Respondent cites no applicable authority for this argument, and without it, her general analogy warrants no further discussion. This objection is also overruled.

B. Disbarment Is Appropriate

{¶ 39}When imposing sanctions for attorney misconduct, we consider the duties violated, the actual or potential injury caused, the attorney's mental state, and sanctions imposed in similar cases. *Disciplinary Counsel v. Brown* (1999), 87 Ohio St.3d 316, 320, 720 N.E.2d 525. Before making a final determination, we also weigh evidence of the aggravating and mitigating factors listed in Section 10 of the Rules and Regulations Governing Procedure on Complaints and Hearings Before the Board of Commissioners on Grievances and Discipline ("BCGD Proc.Reg."). Id. at 321, 720 N.E.2d 525.. See, also, *Stark Cty. Bar Assn. v. Buttacavoli*, 96 Ohio St.3d 424, 2002-Ohio-4743, 775 N.E.2d 818, ¶ 16, and *Cleveland Bar Assn. v. Glatki* (2000), 88 Ohio St.3d 381, 384, 726 N.E.2d 993.

{¶ 40}By falsifying a deed and advancing her own financial interests without her client's informed consent, respondent violated duties to and harmed her client, the public, the legal system, and the legal profession. As relator observed, she demonstrated "a complete inability to act as a lawyer without engaging in habitual acts of fraud and deceit." For deliberately

falsifying official documents and attempting to conceal self-dealing, we will disbar the offending lawyer. *Stark Cty. Bar Assn. v. Hare,* 99 Ohio St.3d 310, 2003-Ohio-3651, 791 N.E.2d 966, ¶ 33.

{¶ 41}Disbarment also comports with the sanction that the American Bar Association's Standards for Imposing Lawyer Sanctions ("ABA Standards") recommend for this misconduct. American Bar Association Center for Professional Responsibility, Standards for Imposing Lawyer Sanctions (2005). According to ABA Standards 4.31(a), disbarment is generally appropriate when a lawyer, acting without the client's informed consent, with interests adverse to the client's, and with the intent to benefit the lawyer, represents the client and causes serious or potentially serious injury to the client. Disbarment is also appropriate, according to ABA Standards 5.11(b), when "a lawyer engages in * * * intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice law."

{¶ 42}Moreover, no mitigating evidence warrants our lenience. Respondent has a prior disciplinary record for a previous episode of self-dealing, and her actions since then are even more dishonest and selfish. BCGD Proc.Reg. 10(B)(1)(a) and (b). She also provided deceptive explanations for her actions before and during the hearing. BCGD Proc.Reg. 10(B)(1)(f). Finally, respondent has no conception of how she violated our profession's ethical standards or why these standards even exist. BCGD Proc.Reg. 10(B)(1)(g).

{¶ 43} We therefore permanently disbar respondent from the practice of law in Ohio. Costs are taxed to respondent.

Judgment accordingly.

MOYER, C.J., PFEIFER, O'CONNOR, O'DONNELL, LANZINGER AND CUPP, JJ., concur.

LUNDBERG STRATTON, J., dissents.

LUNDBERG STRATTON, J., dissenting.

{¶ 44} The charges against respondent, Linda Cook, are serious and may justify disbarment. However, I respectfully dissent and decline to join the majority's opinion because I believe that this court's denial of Cook's motion for a continuance of her oral argument infringed upon her due process rights.

{¶ 45} Respondent's case was scheduled for oral argument on February 14, 2007. Beginning on the 13th and continuing through the 14th, a major winter storm hit the Midwest, including Ohio and Michigan, dumping more than a foot of snow in northwest Ohio and snow and freezing rain in central Ohio. The storm wreaked havoc on travel in the region.

{¶ 46} Cook's attorney was from Lathrup Village, Michigan, over 200 miles north of Columbus. Consequently, he had made reservations to fly to Columbus from Detroit on the afternoon of February 13. However, according to the Associated Press, because of the inclement weather, "flight delays and

cancellations were common at airports across [Ohio]." In fact, the attorney's flight was canceled.

{¶ 47}On the ground, conditions were no better, with 30-mile-per-hour winds and up to ten inches of snow expected in southeast Michigan by the evening of the 13th. The Michigan State Police reported a high volume of accidents.

{¶ 48}Driving in most of Ohio, and particularly northwest Ohio, which was under a blizzard warning, was likewise hazardous. The storm prompted schools, businesses, and even local governments to close. The Ohio State University in Columbus shut its doors because of weather for the first time in four years. Columbus had not seen a heavier snowfall since 2004. Even two high-profile criminal cases in Ohio were postponed. The Associated Press reported, "Sheriff's offices in some counties warned people that they could be arrested for driving * * *." In sum, this weather was unusual in its intensity and scope and impeded travel from lower Michigan through Ohio.

{¶ 49}After his flight was canceled and knowing that driving was dangerous, the attorney promptly contacted the court and moved for a continuance, which the court denied administratively.

{¶ 50}Many, if not most, weather-related conditions do not warrant a continuance. However, in my opinion the severity of the weather, as well as the sanction at issue (disbarment), in the instant case did merit a continuance here. Although no one can be certain whether argument from her attorney would have persuaded this court to impose a different

penalty, I believe that the denial of that opportunity infringed upon Cook's due process rights.[1] Accordingly, I respectfully dissent.

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1. Because of the unavailability of respondent's counsel, neither party presented an oral argument, and the case was submitted on the briefs. Nevertheless, Cook was denied her opportunity to argue her case before the court.

APPENDIX D

THE SUPREME COURT OF OHIO

Case No. 06-1994

[Filed July 11, 2007]

Toledo Bar Association,	)
Relator,	)
	)
v.	)
	)
Linda S. Cook,	)
Respondent.	)
	)

ON CERTIFIED REPORT BY THE BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE OF THE SUPREME COURT

ORDER

The Board of Commissioners on Grievances and Discipline filed its Final Report in this court on October 26, 2006, recommending that pursuant to Rule V(6)(B)(1) of the Supreme Court Rules for the Government of the Bar of Ohio the respondent, Linda S. Cook, be permanently disbarred from the practice of law. Respondent filed objections to said Final Report,

and this cause was considered by the court. On consideration thereof,

It is ordered and adjudged by this court that pursuant to Gov.Bar R. V(6)(B)(1), respondent, Linda S. Cook, Attorney Registration Number 0061876, last known business address in Sylvania, Ohio, be permanently disbarred from the practice of law consistent with the opinion rendered herein.

It is further ordered that respondent immediately cease and desist from the practice of law in any form and is hereby forbidden to appear on behalf of another before any court, judge, commission, board, administrative agency or other public authority.

It is further ordered that respondent is hereby forbidden to counsel or advise or prepare legal instruments for others or in any manner perform such services.

It is further ordered that respondent is hereby divested of each, any and all of the rights, privileges and prerogatives customarily accorded to a member in good standing of the legal profession of Ohio.

It is further ordered that respondent surrender respondent's certificate of admission to practice to the clerk of the court on or before 30 days from the date of this order, and that respondent's name be stricken from the roll of attorneys maintained by this court.

It is further ordered that respondent be taxed the costs of these proceedings in the amount of Two Thousand Three Hundred Seventy-Two Dollars and

Ten Cents ($2,372.10), which costs shall be payable to this court by certified check or money order on or before 90 days from the date of this order. It is further ordered that if these costs are not paid in full on or before 90 days from the date of this order, interest at the rate of 10% per annum shall accrue as of 90 days from the date of this order, on the balance of unpaid Board costs, respondent will be found in contempt of the Supreme Court, and the matter will be referred to the office of the Attorney General for collection.

It is further ordered, sua sponte, by the court, that within 90 days of the date of this order, respondent shall reimburse any amounts that have been awarded against the respondent by the Clients' Security Fund pursuant to Gov.Bar R. VIII(7)(F). It is further ordered, sua sponte, by the court that if, after the date of this order, the Clients' Security Fund awards any amount against the respondent pursuant to Gov.Bar R. VIII(7)(F), the respondent shall reimburse that amount to the Clients' Security Fund within 90 days of the notice of such award.

It is further ordered that on or before 30 days from the date of this order, respondent shall:

1. Notify all clients being represented in pending matters and any co-counsel of respondent's disbarment and consequent disqualification to act as an attorney after the effective date of this order and, in the absence of co-counsel, also notify the clients to seek legal service elsewhere, calling attention to any urgency in seeking the substitution of another attorney in respondent's place;

2. Regardless of any fees or expenses due respondent, deliver to all clients being represented in pending matters any papers or other property pertaining to the client, or notify the clients or co-counsel, if any, of a suitable time and place where the papers or other property may be obtained, calling attention to any urgency for obtaining such papers or other property;

3. Refund any part of any fees or expenses paid in advance that are unearned or not paid, and account for any trust money or property in the possession or control of respondent;

4. Notify opposing counsel in pending litigation or, in the absence of counsel, the adverse parties of respondent's disqualification to act as an attorney after the effective date of this order, and file a notice of disqualification of respondent with the court or agency before which the litigation is pending for inclusion in the respective file or files;

5. Send all such notices required by this order by certified mail with a return address where communications may thereafter be directed to respondent;

6. File with the Clerk and the Disciplinary Counsel of the Supreme Court an affidavit showing compliance with this order, showing proof of service of notices required herein, and setting forth the address where respondent may receive communications; and

7. Retain and maintain a record of the various steps taken by respondent pursuant to this order.

It is further ordered that on or before 30 days from the date of this order, respondent surrender the attorney registration card for the Biennium 2005/2007.

It is further ordered that until such time as respondent fully complies with this order, respondent shall keep the Clerk, the Toledo Bar Association, and the Disciplinary Counsel advised of any change of address where respondent may receive communications.

It is further ordered, sua sponte, that all documents filed with this court in this case shall meet the filing requirements set forth in the Rules of Practice of the Supreme Court of Ohio, including requirements as to form, number, and timeliness of filings.

It is further ordered, sua sponte, that service shall be deemed made on respondent by sending this order, and all other orders in this case, by certified mail to the most recent address respondent has given to the Office of Attorney Registration and CLE.

It is further ordered that the clerk of this court issue certified copies of this order as provided for in Gov.Bar R. V(8)(D)(1), that publication be made as provided for in Gov.Bar R. V(8)(D)(2), and that respondent bear the costs of publication.

/s/
THOMAS J. MOYER
Chief Justice

APPENDIX E

THE SUPREME COURT OF OHIO

Case No. 06-1994

[Filed February 13, 2007]

Toledo Bar Association,	)
Relator,	)
	)
v.	)
	)
Linda S. Cook,	)
Respondent.	)
	)

RESPONDENT'S EMERGENCY MOTION TO ADJOURN AND TO RESCHEDULE ORAL ARGUMENT

Now comes Robert H. Golden, attorney for Linda Cook respondent and moves this court to adjourn oral argument and reschedule same and in support hereof, states:

1. Counsel is a member of the Michigan Bar with offices in Southfield, Michigan.

2. Counsel was booked on Northwest Airlines Flight number 5833 (See boarding pass, attached hereto) from Detroit, Michigan to

Columbus, Ohio departing at 3:27 pm on February 13, 2007 and scheduled to get counsel into Columbus with plenty of time to spare so that he could attend oral argument of this case scheduled on the court's docket for oral argument on February 14, 2007.

3. Counsel was at the Detroit Metropolitan Airport at 1:30 pm when the northwest flight to Columbus, Ohio was cancelled due to a severe winter storm.

4. Counsel, Robert H. Golden, cannot get to Columbus, Ohio due to the extreme weather conditions prevailing in Detroit, Michigan and requests that oral argument in this case be rescheduled as the decision of this court is extremely important to the respondent, Linda Cook.

WHEREFORE Respondent requests that oral argument in this case be rescheduled.

/s/
Counsel for ***Respondent*** Linda S. Cook
Robert H. Golden, Esq. (P14108)
Pro Hac Vice
Armand D. Kunz, Esq. (P16299)
Pro Hac Vice
Golden & Kunz, P.C.
27465 Southfield Road
Lathrup Village, Michigan 48076
Phone: (248) 559-8118
Fax: (248) 559-8221
robgol@sbcglobal.net

CERTIFICATION

Now comes Robert H. Golden and hereby certifies, under penalty of perjury that the forgoing motion contains true allegations of his own knowledge.

/s/_____
Robert H. Golden

Flight Purchase Confirmation

Columbus 2/13/07
nwa.com Reservations Confirmation # L9I7GR

1 Adult:	$448.37
Taxes/Fees:	$54.43
Total Trip Cost:	$502.80

Traveler(s):	**Frequent Flyer Details:**	
Robert H. Golden	Northwest WorldPerks	450093383

Departing Flight(s)

Tuesday, February 13, 2007	**depart**	**3:27pm**	**Detroit Wayne County**
Northwest Airlines Flight #5833		afternoon	**Metropolitan Airport**
			(DTW) Detroit

	arrive **4:35pm** afternoon	**Columbus Ohio Port Columbus Intl (CMH) Columbus**
operated by PINNACLE AIRLINES JET SERV/NW AIRLINK		

Seat(s): 6A
Meal: none
Cabin: Economy
Equipment: CRJ
Duration: 1hr 8min
Approximate Distance: 161 miles

Total Duration: 1hr 8min
Total Distance: 161 miles

APPENDIX F

THE SUPREME COURT OF OHIO

Case No. 2006-1994

[Filed February 16, 2007]

Toledo Bar Association	)
	)
v.	)
	)
Linda S. Cook	)
	)

ENTRY

This cause is pending before the Court upon the filing of a report by the Board of Commissioners on Grievances and Discipline. Upon consideration of respondent's emergency motion to adjourn and to reschedule oral argument,

It is ordered by the Court that the motion is denied.

It is further ordered by the Court that the oral argument shall proceed on the date scheduled but that, should respondent's attorney not appear for argument, the case will be submitted on the briefs.

(Board of Commissioners on Grievances & Discipline; No. 05047)

/s/
THOMAS J. MOYER
Chief Justice

APPENDIX G

BEFORE THE BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE OF THE SUPREME COURT OF OHIO

Case No. 05-047

[Filed October 6, 2006]

In Re:	)
	)
Complaint against	)
	)
Linda S. Cook	)
Attorney Reg. No. 0061876	)
Respondent	)
	)
Toledo Bar Association	)
Relator	)
	)

Findings of Fact, Conclusions of Law and Recommendation of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio

This matter came on for final hearing on August 17, 2006 and August 18, 2006 in Toledo, Ohio, before Panel Members Judge Daniel Gaul of Cuyahoga County, Theresa B. Proenza of Stark County and Charles E. Coulson of Lake County, Chair. None of the

Panel members was a member of the Probable Cause Panel that heard this Complaint or resided in the District from which the Complaint arose. The hearing was held on the allegations contained in the First Amended Complaint, filed on September 13, 2005.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Panel unanimously finds, by clear and convincing evidence, that:

1) Respondent, Linda S. Cook, whose Supreme Court registration number is 0061876, was admitted to the practice of law in the State of Ohio on November 8, 1993, and is subject to the Supreme Court Rules for the Government of the Bar of Ohio.

2) At all times material to the allegations contained in the Amended Complaint, an attorney/client relationship existed between the Respondent and Ms. Esther J. Benfer. Esther Benfer's date of birth was October 30, 1911 and at some point after Respondent commenced this representation, Benfer became unable to take care of herself or her property.

3) Linda Cook testified that the initial contact with Esther Benfer was in May, 2000. Between May, 2000 and June, 2001,[1] Respondent

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1. Respondent submitted pages of her computer generated calender (Exhibits 5, 6, 7, 8, 9 & 10) showing appointments with

prepared the following documents for Esther Benfer. There is no dispute that all of the documents were signed on June 8, 2001:

A) Revocable Living Trust Agreement (Exhibit F);

B) Last Will and Testament (Exhibit G);

C) Comprehensive Durable Power of Attorney (Exhibit H);

D) Durable Special Power of Attorney (Exhibit I);

E) Assignment of Tangible Personal Property (Exhibit J).

As with the above documents, the bill submitted by Linda Cook for preparing these documents is also dated June 8, 2001 (Exhibit K).

4) Respondent named herself as a Co-Trustee along with Esther J. Benfer in the Revocable Living Trust Agreement, dated June 8, 2001 (Exhibit F). Respondent did not recommend to Esther J. Benfer that she secure disinterested advice from an independent competent person

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Esther Benfer in May 2000, June 2000, December 2000, May 2001 and June 2001. The work papers from Respondent's file for Esther Benfer containing the client's personal information have only one date, to-wit: May 8, 2001. This date is found on the "Client File Checklist" which is the last page of Exhibit E.

or other counsel as to whether or not the Respondent should be named as a Trustee.

5) Respondent named herself as the personal representative of the Will, and if the Respondent could not so act, Respondent named her Law Office to act as the successor personal representative in the Last Will and Testament of Esther J. Benfer, dated June 8, 2001 (Exhibit G). Respondent did not recommend to Esther J. Benfer that she secure disinterested advice from an independent competent person or other counsel as to whether or not the Respondent and her Law Office should be named as the representative in the Will.

6) Respondent named herself as the agent to exercise the powers enumerated therein in the Comprehensive Durable Power of Attorney of Esther J. Benfer, dated June 8, 2001 (Exhibit H). Respondent did not recommend to Esther J. Benfer that she secure disinterested advice from an independent competent person or other counsel as to whether or not the Respondent should be appointed as "Agent" for Esther Benfer in the Power of Attorney.

7) Respondent appointed herself as the attorney-in-fact for Esther J. Benfer in the Durable Special Power of Attorney, dated June 8, 2001 (Exhibit I). Respondent did not recommend to EstherJ. Benfer that she secure disinterested advice from an independent competent person or other counsel as to whether or not the

Respondent should be named Esther Benfer's attorney-in-fact.

8) In the Assignment of Tangible Personal Property of Esther J. Benfer prepared by Respondent (Exhibit J), dated June 8, 2001, Esther J. Benfer assigned all of her tangible property "(jewelry, clothing, household goods, furniture, furnishings, fixtures, chinaware, silver, photographs, works of art, books, boats, automobiles, sporting goods, farm machinery, livestock, artifacts, and all other tangible articles of household goods or personal use)" to the Esther J. Benfer Living Trust (Exhibit J). This is the trust in which Respondent named herself as a Trustee.

9) Esther Benfer owned a parcel of real property, hereinafter called the Benfer Farm. Respondent testified during the hearing that she had discussions with Esther J. Benfer about the "look back" provision of the Medicaid law. Respondent's discussions with Esther J. Benfer explained that if she transferred her real property, divested herself of this asset, and at least three years had not passed, she would not be eligible for Medicaid benefits. On April 25, 2005, Respondent also testified[2]

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2. Transcript of testimony given by Respondent "In the Matter of Esther Benfer, Incapacitated Individual and Protected Individual," Probate Court for the County of Lenawee, Michigan, File No, 04-01-44426CA, in the April 25, 2005 hearing on Petition for Authority to Pay Bills and Fees, page 26, lines 13 through 24.

> "Esther came to me about donating the property to the Church. There was concern about if she did that, if she became ill and went into the nursing home, how that nursing home bill would be paid because she didn't feel she had enough money to do that. Many times when we do Medicaid planning we gift to a child. They know there is a three year waiting period and if, by chance, they go in sooner they have to private pay. Either that child has to come up with it out of mom's funds, out of their funds, or, they would have to sell the home that was gifted to them in order to pay that. So, we did that so if that arose that could occur and whatever was left could still go to the Church."

Thus, as the *Trust* created by Respondent for Esther Benfer was dated June 8, 2001, and as explained by Respondent, any real property transferred into the trust would be subject to a three year "look back" period. This is unless the real property would appear to have been transferred three years earlier, to-wit: before June 8, 1998. With the Trust being created in June, 2001, the only way for the property to appear to have been transferred three years earlier in 1998, would be to fraudulently pre-date the deed.

10) Respondent prepared a Quit-Claim Deed transferring the Benfer Farm, to "Linda S. Cook, Trustee" (Exhibit A). Amazingly enough, this Quit-Claim Deed is dated May 20, 1998.

This Quit-Claim Deed shows that it was recorded in the Fulton County Recorder's Office on July 12, 2001. At the hearing, Respondent maintained that the 1998 date was a typographical error. The Respondent testified that the typographical error occurred because a prior deed with the date of May 20, 1998 was saved on a computer and was used as a template, and all information was changed except that date. Respondent testified that the deed was actually prepared and executed in May or June of 2000.[3]

11) The Panel does not find credible the testimony of Respondent that the date on the Quit-Claim Deed (Exhibit A) was a mistake.[4] (See Time Line attached to this report) Specifically, as to Exhibit A, the Quit-Claim Deed transferring the Benfer Farm to the Respondent as Trustee, Respondent made the following inconsistent statements as to the true date that she received the title to the Benfer Farm:

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3. The year 2000 will become significant and necessary to Respondent when we discuss Respondent's Income Tax Return for the year 2000. Respondent's 2000 Income Tax Return was signed by her on October 14, 2001 (Exhibit X).

4. In fact, the panel did not find much of Respondent's testimony to be credible and finds the dates Respondent placed on other documents to be inaccurate. The Panel further finds that the excessive number of "errors" have established a pattern of deception and misconduct, not errors.

a.) In Respondent's Federal Income Tax Return for the year 2000 (Exhibit X), Respondent stated that she received title to the Benfer Farm as a gift in December of 1997. The date Respondent made this claim on her Federal Income Tax Return is October 14, 2001.

b.) After the allegations contained in the Amended Complaint were being investigated by the Toledo Bar Association, an inquiry was made into the Benfer Farm property. Respondent signed and approved an August 18, 2004, letter (Exhibit N) wherein she states that she received title to the Benfer Farm as trustee on May 20, 1998.

c.) At the disciplinary hearing held on August 17, 2006 and August 18, 2006, Respondent testified that the actual date of the deed transferring the Benfer Farm to her as Trustee was prepared and signed in May or June of 2000.

d.) Respondent prepared a document (Exhibit M), signed by Esther Benfer, with the typed date of August 30, 2001. In this document dated August 30, 2001, the Respondent stated that Esther Benfer gave her the Benfer Farm property in 1998 as a gift.

12) After the Quit-Claim Deed (Exhibit A) had been recorded in July of 2001, Respondent made changes to it (See Exhibit B). Respondent claimed that the deed she prepared (Exhibit A) had a mistake...another mistake. Respondent

said that she was supposed to have received the Benfer Farm as a gift to her, individually, not as the Trustee of Esther Benfer. Respondent took the recorded Quit-Claim Deed (Exhibit A), crossed out the word "Trustee" after her name, and typed in the word "Married." This altered deed was not re-signed by Esther Benfer. This altered deed (Exhibit B) was recorded by Respondent in the Fulton County Recorder's Office on September 10, 2001.[5]

13) Thereafter, Respondent prepared a Quit-Claim Deed (Exhibit C) and transferred title to the Benfer Farm to the United Methodist Church, reserving a life estate to Esther J. Benfer. Again, the dates of the preparation, signing and recording of the document appear removed in time and reality.[6] Respondent testified that she

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5. This is another instance where Respondent's ruse that the deed's date of May 20, 1998 was a mistake breaks down. At the hearing, a member of Respondent's office staff, Wendy Mac Kay Warnecke, testified as to how Exhibit A's date could be a mistake, as it was prepared by using a formerly saved deed as a template. Ms. Warnecke also testified that she discussed this "1998" date with Respondent in 2001. When re-recording this deed (Exhibit B) in September, 2001, Respondent changed "Trustee" to "Married" but did not change the 1998 date, when she had the opportunity. Respondent testified at the hearing that she did not discover the "1998 Mistake" until after her letter of August 18, 2004 (Exhibit N).

6. For IRS purposes, it is necessary to Respondent for it to appear that she gave the Benfer Farm to the Church in the year 2000. Even though Respondent lists on her 2000 Income Tax Return,

prepared Exhibit C in November or December of 2000. The Quit-Claim Deed is dated December 25, 2000 and Respondent says the deed was actually signed on December 25, 2000. This deed (Exhibit C) was recorded in the Fulton County Recorder's Office on December 13, 2001. The contract prepared by the Respondent with the Methodist Church (Exhibit O) for the transfer of the Benfer Farm, of which the Quit-Claim Deed (Exhibit C) is an instrument of transfer, is also dated December 25, 2000, but the testimony of Respondent was that the contract was not signed until after June of 2001.

14) Respondent prepared a document (Exhibit M), which was signed by Esther J. Benfer. This document has a typewritten date of August 30, 2001. This document reads: "I, Esther Benfer, give Linda S. Cook permission to write off on her income tax return the gift of real property that I gave her in 1998 and she gave to the Metamora United Methodist Church on December 25, 2000." Respondent did not recommend to Esther J. Benfer that she secure disinterested advice from an independent competent person or other counsel before signing this document of a gift.

"December 1997" as the date she received title to the Benfer Farm, she does not take a gift tax deduction until the tax year 2000. The 2000 tax return is dated October 14, 2001 (Exhibit X). If Respondent gave the farm to the Church in 2001 (as appears to the Panel to be the case) she would not be entitled to this tax deduction for the tax year 2000.

Returning Flight(s)

Wednesday, February 14, 2007	**depart**	**5:00pm** Evening	**Columbus Ohio Port Columbus Intl (CMH)** Columbus
Northwest Airlines Flight #5816			
	arrive	**6:12pm** Evening	**Detroit Wayne County Metropolitan Airport (DTW)** Detroit
operated by PINNACLE AIRLINES JET SERV/NW AIRLINK			

Seat(s): 9A
Meal: none
Cabin: Economy
Equipment: CRJ
Duration: 1hr 12min
Approximate Distance: 161 miles

15) For the tax years of 2000, 2001, 2002, 2003 and 2004 the Respondent took a total of nearly $225,000.00[7] in income tax deductions for Respondent giving the Benfer Farm to the United Methodist Church (Exhibit T).

16) On April 16, 2004, Attorney Jeffrey L. Robinson wrote a letter to Respondent (Exhibit V). This letter was hand delivered to Respondent on April 20, 2004. Attorney Robinson stated that he was now representing Esther Benfer and enclosed a Revocation of a Power of Attorney that was signed by Esther Benfer. He requested that Respondent have no further contact with Esther Benfer. Mr. Robinson asked about the status of the Benfer Farm property. He stated that Respondent had removed the personal property from Ms. Benfer's home, and Ms. Benfer now wanted her personal property returned as soon as possible.

17) Disregarding the letter of Attorney Jeffrey Robinson, on the same day she received it, Respondent, in her own handwriting, prepared Exhibit S. Exhibit S is a Petition for Appointment of Guardian of Incapacitated Individual in the State of Michigan Probate

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7. Tax Year 2000 = $56,804; Tax Year 2001 = $38,169; Tax Year 2002 = $55,454; Tax Year 2003 = $20,938; Tax Year 2004 = $53,608

Court, Lenawee county.[8] In this Petition, Respondent states she is making this petition as Esther Benfer's "Attorney and Power of Attorney." Respondent signs the document as the "Petitioner," and Respondent further signs Respondent's sister's name, Dorothy M. Kennedy as the "Attorney." (Respondent did place her initials after the Kennedy signature.) Except for the frail and feeble signature of Esther Benfer on this document, all the handwriting belongs to the Respondent. In the Petition for Appointment of Guardian (Exhibit S), executed on April 20, 2004, Respondent, in the paragraph identified with a circled "H" states that Esther Benfer "lacks sufficient understanding or capacity to make or communicate informed decisions due to the following conditions:...physical illness or disability."

18) Despite Attorney Jeffrey Robinson's April 16, 2004 letter (Exhibit V), and despite Respondent's application to a Michigan Probate Court that Esther Benfer lacked sufficient understanding and capacity, on April 21, 2004 the Respondent had Esther Benfer sign a Comprehensive Durable General Power of Attorney (Exhibit U). Respondent again had herself appointed as the attorney and agent of Esther Benfer. And yet again, there is no evidence that Respondent recommended to

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8. Respondent's license as an attorney in the State of Michigan was suspended at this time.

Esther J. Benfer that she secure disinterested advice from an independent competent person or other counsel before signing this document, although it is evident by this time that Esther Benfer was not capable of making informed decisions.

19) Respondent claims that Esther Benfer suffered no harm because of her. As proof of Respondent's desire to only help Esther Benfer, she only charged Esther Benfer "one cake" for her representation (Exhibit K).[9] Respondent stated that Esther Benfer did not have sufficient income to take advantage of the gift tax deduction for the Benfer Farm, and if Respondent did not take it, the deduction would have gone to waste.

20) The Panel unanimously finds, by clear and convincing evidence, that as to Count 1 of the Amended Complaint, Respondent violated DR1-102(A)(4) in that Respondent engaged in conduct involving dishonesty, fraud, deceit or misrepresentation; and DR1-102(A)(6) that the Respondent engaged in other conduct that

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9. This is in marked contrast to the $11,162.50 bill Respondent submitted for her services to Esther Benfer, "In the Matter of Esther Benfer, Incapacitated Individual and Protected Individual," Probate Court for the County of Lenawee, Michigan, File No, 04-01-44426CA. The court stated that it didn't "believe this billing in any way, shape or form," and only approved a payment of $500. April 25, 2005 hearing on Petition for Authority to Pay Bills and Fees, page 77, lines 22 through 24.

adversely reflected on Respondent's fitness to practice law.

21) The Panel unanimously finds, by clear and convincing evidence, that as to Count 2 of the Amended Complaint, Respondent violated DR 5-101(A)(1), that except with the consent of the client after full disclosure, a lawyer shall not accept employment if the exercise of professional judgment on behalf of the client will be, or reasonably may be affected by the lawyer's financial, business, property, or personal interests; DR 5-104(A), a lawyer shall not enter into a business transaction with a client if they have differing interests therein and if the client expects the lawyer to exercise his professional judgment therein for the protection of the client, unless the client has consented after full disclosure; DR 1-102(A)(4), engage in conduct involving dishonesty, fraud, deceit or misrepresentation; DR 1-102(A)(3), engage in illegal conduct involving moral turpitude; and DR 1-102(A)(6), engage in other conduct that adversely reflects on the lawyer's fitness to practice law.

MITIGATION

Respondent testified that she has improved her law office's use of forms so that a "mistake" such as occurred on the Quit-Claim Deeds having the wrong date should not reoccur. She also submitted evidence that she attended a seminar on April 30, 2003 titled "The ABC's of Successful Law Office Management for Small and Medium Firms." However, the Panel finds

no mitigation on Respondent's behalf as outlined in BCGD Proc. Reg. 10(13)(2).

AGGRAVATION

The Panel unanimously finds pursuant to BCGD Proc. Reg. 10(B)(1) the following matters in aggravation are present.

A) Prior Disciplinary Offenses: On November 6, 2002, the Supreme Court of Ohio in *Toledo Bar Association v. Cook,* 97 Ohio St.3d 225, 2002-Ohio-5787, suspended Respondent from the practice of law in the State of Ohio for one year, with six months stayed. In the prior disciplinary case, Respondent was found to have prepared a Will that named the Respondent's siblings' corporation as a beneficiary, in violation of DR 5-101(A)(2)(e). Respondent was reinstated to the practice of law on August 25, 2003.

B) Dishonest or Selfish Motive: The Panel unanimously finds that the Respondent's actions clearly showed a dishonest and/or selfish motive.

C) Pattern of Misconduct: Respondent testified that the discrepancy in dates were merely mistakes. The Panel unanimously finds that the number of "mistakes" have established a pattern of deception and misconduct, not errors.

D) Submission of False Evidence, False Statements, or other Deceptive Practices during Disciplinary Process: The Panel unanimously

finds that during her testimony at the hearing, the Respondent's explanations of her conduct involved false statements and a pattern of deceptive practices.

E) Refusal to Acknowledge Wrongful Nature of the Conduct: Respondent has totally failed or refused to acknowledge any wrongful nature of her conduct.

RECOMMENDED SANCTION

Respondent acknowledges that she did not provide the best lawyering but insists that no violations of Disciplinary Rules have occurred. Respondent asks that the matter be dismissed. Relator asks that Respondent be permanently disbarred from the practice of law, or in the alternative as a minimum, receive an indefinite suspension.

PANEL RECOMMENDATION

As the Panel found no mitigating factors, and a number of factors in aggravation, it is the unanimous decision of the Panel that Relator be disbarred from the practice of law.

BOARD RECOMMENDATION

Pursuant to Gov. Bar Rule V(6)(L), the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio considered this matter on October 6, 2006. The Board adopted the Findings of Fact, Conclusions of Law and Recommendation of the Panel and recommends, based on the extraordinary

acts of misconduct in the record, that the Respondent, Linda S. Cook, be permanently disbarred. The Board further recommends that the cost of these proceedings be taxed to the Respondent in any disciplinary order entered, so that execution may issue.

Pursuant to the order of the Board of Commissioners on Grievances and Discipline of The Supreme Court of Ohio, I hereby certify the foregoing Findings of Fact, Conclusions of Law, and Recommendations as those of the Board.

/s/

JONATHAN W. MARSHALL, Secretary
Board of Commissioners on
Grievances and Discipline of
The Supreme Court of Ohio

TIME LINE
for
TRANSFER OF BENFER FARM

The following is a time line of relevant dates that do not appear to be manipulated by Respondent or could not have been manipulated by Respondent:

May 8, 2001: Client File Checklist prepared, (Exhibit E).

June 8, 2001: Signing of:

- Revocable Living Trust Agreement, (Exhibit F).
- Last Will and Testament, (Exhibit G).
- Comprehensive Durable Power of Attorney, (Exhibit H).
- Durable Special Power of Attorney, (Exhibit I).
- Assignment of Tangible Personal Property, (Exhibit J)

June 8, 2001: Date of Respondent's bill for the above services, (Exhibit K.).

July 12, 2001: Recording of first Quit-Claim Deed transferring the Benfer Farm to Respondent as "Trustee," (Exhibit A).

Between July 12, 2001 and September 10, 2001: Respondent altered the recorded Quit-Claim Deed (Exhibit A) by crossing out "Trustee" and typing in "Married."

September 10, 2001: Recording of altered Quit-Claim Deed changing Respondent's status from "Trustee" to "Married," (Exhibit B).

October 14, 2001: Respondent signs her year 2000 Income Tax Return claiming her first gift deduction for the Benfer Farm, (Exhibit X).

December 13, 2001: Recording of Quit-Claim Deed giving the Benfer Farm to the Church, (Exhibit C).

APPENDIX H

THE SUPREME COURT OF OHIO

Case No. 06-1994

[December 13, 2006]

Toledo Bar Association,	)
Relator,	)
	)
v.	)
	)
Linda S. Cook,	)
Respondent	)
	)

RESPONDENT'S OBJECTIONS AND BRIEF IN SUPPORT OF RESPONDENT'S OBJECTIONS TO REPORT, FINDINGS OF FACT AND CONCLUSIONS OF LAW OF THE BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE

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2. The Board has made findings of misconduct which were not charged in the complaint filed in this matter and for which there is no evidentiary support which violates the respondent's right to fair notice of what she is called upon to defend and violates her rights to due process of law 15

3. The Hearing Panel denied Respondent's motion to have a bifurcated hearing on aggravation and mitigation, requiring Respondent to express remorse for acts which she maintained were not misconduct thereby denying her a fair hearing 23

4. The recommended sanction of disbarment is far too severe and not supported by the record; there is a total lack of guidelines for the imposition of any sanction 27

REQUESTED RELIEF AND SIGNATURE 30

APPENDIX A-1

FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATION OF THE BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE A-1

OPINION-CARLOS GUERRERO VS BOARD OF EDUCATION OF THE EMERY UNIFIED SCHOOL DISTRICT
U.S. District court- Northern Dist. of California
Case No. C 92 2971 BAC et al. A-15

OBJECTIONS OF RESPONDENT TO REPORT, FINDINGS OF FACT AND CONCLUSIONS OF LAW OF THE BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE

Now comes the above named Respondent, Linda S. Cook, by her Pro Hac Vice counsel, Golden and Kunz, P.C.., and objects to the Report, Findings of Fact and Conclusions of Law of the Board of Commissioners on Grievances and Discipline.

1. There is no evidentiary support for the findings of misconduct.

2. The Board has made findings of misconduct which were not charged in the Complaint filed in this matter and for which there is no evidentiary support which violates the Respondent's right to fair notice of what she is called upon to defend and violates her rights of due process of law.

3. The Hearing panel denied Respondent's Motion to have a bifurcated hearing on aggravation and mitigation, requiring Respondent to express remorse for acts which she maintained were not misconduct thereby denying her a fair hearing.

4. The recommended sanction of disbarment is far too severe and not supported by the record. There is a total lack of guidelines for the imposition of any sanction.

/s/
Robert H. Golden P14108 of the Michigan Bar
Golden and Kunz, P.C.
Pro Hac Vice counsel for Respondent
27465 Southfield Road
Lathrup Village, Michigan 48076
248-559-8118

TABLE OF AUTHORITIES

OHIO CASES:

THE STATE EX REL THE
ILLUMINATING COMPANY
V. CUYAHOGA COUNTY COURT
OF COMMON PLEAS, ET AL,
97 Ohio St. 3d 69;
2002 Ohio 5312; 776 N.E.2d 92 (2002) .....

OHIO STATE BAR ASS'N V. REID,
85 Ohio St. 3d 327:708 N>E.2d 193 (1999) .....

SOIN ET AL V. GREENE COUNTY
BOARD OF REVISION,
110 Ohio St.3d 408; 2006 Ohio 4708;
853 N.E.2d 1165 (2006) .....

FEDERAL CASES:

CARLOS GUERRERO ET AL V.
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1994 U.S. Dist. LEXIS 9259 (1994) .....

IN RE OLIVER,
333 U.S. 257; 68 S. Ct. 400; 92 L.Ed.
682 (1948) .....

IN RE RUFFALO,
390 U.S. 544; 88 S. Ct. 1222; 20 L. Ed.2d 117;
43 Ohio Op.2d 459 (1968) .....

TEXTS:

ABA/BNA LAWYER'S MANUAL ON
PROFESSIONAL CONDUCT
Sect. 101.3001 (1986) .....

RULES FOR THE GOVERNMENT OF THE BAR OF THE STATE OF OHIO

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[page 1]

STATEMENT OF FACTS

The Respondent, Linda S. Cook, is an attorney with offices in Sylvania, Ohio practicing under the firm name of Linda S. Cook and Associates and then as Cook Kennedy and Associates. She is primarily engaged in estate and Medicaid planning (Tr. Pg. 142). (Tr. Pg.21).

In May of 2000 Ms. Cook had discussions with Esther Benfer, a woman 89 years of age, at the Benfer farm in Ohio (Tr. Pg. 145)(Tr. Pg 144) (Tr. Pg. 143). When Ms. Cook left the Benfer farm, she had been engaged as an attorney and understood that she was going to prepare a trust estate plan for Ms. Benfer(Tr. Pg 145) consisting of a Trust, Will, Power of Attorney, Health Care Powers, etc. (Tr. Pg. 145). Substantial inquiry was made about Ms. Benfer's financial standing(Tr. Pg 147). Ms. Benfer wanted to leave her farm to a church to be used for religious purposes or for farming and boys schooling and counseling. (Tr. Pg 145). At their first meeting, Ms. Cook believed that she

was being called upon to create a will or trust. (Tr. Pg. 143). A trust was not immediately created (Tr. Pg. 145) because Ms. Cook and Ms. Benfer were concerned about the divestiture of the farm without adequate consideration of the possibility that Ms. Benfer might, in the future, need the proceeds from a sale of the farm in the event she would need to reside in a nursing home.

Ms. Cook and Ms. Benfer discussed Medicaid qualifications and it was determined that Ms. Benfer's assets were too great to qualify for Medicaid. (Tr. Pg 149-150). Even if she gave her farm away, as she wanted to do, she would be dis-qualified from Medicaid for at least a penalty period of 32 months and then would qualify for Medicaid only if she had reduced her assets to $1,500.00 (Tr. Pg 150-151). Originally Ms. Benfer wanted to create a trust, but then decided, after consultation with the Respondent, that a deed should be prepared conveying the farm to an individual, rather than to a trust, so that the "look back" period for Medicaid qualification would be only three instead of five years (Tr. Pg. 151-152).

Ms. Benfer had no family to whom she could deed her farm and asked Ms. Cook if she would be the grantee of the deed for her (Tr. Pg 152). She asked the Respondent to hold the farm until she was ready to convey it to the church(Tr. Pg 152). Because Ms. Benfer had no one else, Ms. Cook agreed to receive the farm and carry out Ms. Benfer's wishes, conveying the farm to the church when the question of Ms. Benfer's need for the proceeds of sale of the farm no longer existed (Tr. Pg 153). It is this desire to help and aid her client that brought these proceedings.

Ms. Cook directed her staff to prepare a deed. She proofread the deed marking it with corrections and sent it back to be redone. Ms. Benfer had agreed to come into the office and execute the deed. The date of that appointment was the date Ms. Cook had put on the revision of the deed (Tr. Pg. 153-154).

Ms. Benfer called and asked if she could just come in and sign the deed. Since Ms. Cook had made the necessary corrections and had examined the descriptions, names and dates on the deed and found them to be correct, she did not anticipate any problem and told Ms. Benfer that she could come in although she, Ms. Cook, was not able to be there (Tr. Pg 154). Ms. Cook believes that the deed, with the correct dates that she had approved, had been misplaced and Nancy Cunningham, a staff member who prepared deeds, being unable to find the deed that was approved by Ms. Cook, cloned a deed from a computer file, printing out the new deed for Ms. Benfer to sign (Tr. Pg 155; Tr. Vol.# 2 Pg. 44)). The deed which Ms. Benfer signed was mistakenly dated "1998", and was not the deed that Ms. Cook had prepared (Tr. Vol. #2 Pg 37). This mistake was not discovered by Ms. Cook. Even the witnesses present at the execution of the deed didn't notice the incorrect date. (Tr. Vol#2 Pg 13). This was deed "A", conveying the farm to Ms. Cook as trustee (Tr. Pg. 22). The deed was not prepared by Ms. Cook nor at her direction. (Tr. Vol.# 2 Pg. 44) The 1998 date on the deed was not a correct date (Tr. Pg. 155), but this error was not discovered by Ms. Cook until she received the formal complaint in this matter some five years after the transaction in question. (Tr. Pg. 155).

After the deed was executed and recorded, Ms. Benfer changed her mind about creating a trust. In order to correct the capacity of Ms. Cook reflected in the deed as "trustee", Ms. Cook crossed off "Trustee," inserted "married" and had the deed re- recorded (Tr. Pg 155-156). When Ms. Cook made the correction as to her status as grantee, she did not examine the balance of the deed and did not notice that the dates of execution were in error. (Tr. Pg 156). In fact the office staff didn't discover the error in dating until much later (The exact date when the office staff noticed the error was not remembered by the witness, Ms. McKay.) (Tr. Vol#2 Pg 31-32).

When the deed for transfer of the farm to the church was prepared the deed referred to a contract made between the church and Ms. Cook about support for Ms. Benfer, since she was retaining a life estate in the farm. (Tr. Pg 156-157). Although the contract was not executed on December 25, it was dated December 25, with all parties permission (Tr. Pg 157) (Tr. Vol#2 Pg 14), but was not recorded until 2001 because the County would not approve the legal description. (Tr. Vol. # 2 pg 55).

For her services, Ms. Cook charged Ms. Benfer one cake "because I felt that Esther was trying to do something, something for the church and I felt that I could be a part of that." (Tr. Pg. 158).

Ms. Benfer offered Ms. Cook the charitable income tax deduction for conveyance of the farm to the church. Ms. Benfer, could not take the deduction (Tr. Pg. 171) because Ms. Benfer had insufficient income to take advantage of the tax deduction (Tr. Pg. 162-163). Ms.

Cook in order to verify that Ms. Benfer could not use the deduction and Respondent could without being in violation of the Internal Revenue Code, consulted with Carl Winagel, a Certified Public Accountant,

Ms. Cook informed Ms. Benfer that she would not take the deduction until Ms. Benfer put her offer and gave permission in writing (Tr. Pg 158). The deduction was taken on Ms. Cook's 2000 federal tax return which was prepared and filed in October, 2001 (Tr. Pg 158) at a time when there was no longer an attorney--client relationship between Ms. Cook and Esther Benfer (Tr. Pg 159).

In taking the deduction, Ms. Cook relied upon the fact that Ms. Benfer would not have taken the deduction for lack of income (Tr. Pg. 163). In fact, Ms. Benfer didn't even have enough income to require the filing of a tax return. (Directing Ms. Benfer to consult with another attorney was not necessary since Ms. Benfer couldn't use the deduction in any event.) (Tr. Pg 162). Nothing that was done by Ms. Cook in relation to this charitable deduction in any way violated the Intemal Revenue Code (Testimony of Tax Expert, Smart Sherman commencing in Tr. Vol. #2 Pg 67).

If Ms. Cook believed that the taking of this tax deduction violated ethical rules, she would not have taken it. (Tr. Pg 172). Ms. Cook never intended any type of artiface to defraud or deceive in the preparation of any of the deeds. (Tr. Pg 172-173). If Ms. Cook had discovered the 1998 date on the deeds, she would have had the deeds re-executed or changed (Tr. Pg 173).

After the deed to the farm was executed on December 25, 2000, and the legal description on the deed was recertified Ms. Cook had no open matters for Ms. Benfer and did not represent her until 2004 when Ms. Benfer asked Ms. Cook to prepare certain health powers of attorney.

Subsequently, an attorney, believed to have been sent by members of the church, met with Ms. Benfer and had her revoke the existing health care powers. Thereafter, Ms. Cook met with Ms. Benfer, at Ms. Benfer's request, (Tr. Vol. # 2 Pg 47) to restore the prior revoked powers (Tr. Vol. # 2 Pg 15).

Cook Kennedy and Associates of which Ms. Cook is a principal, keeps calendars which clearly indicate the dates when meetings were held with Ms. Benfer substantiating and corroborating that the year 1998 on the two deeds was entered in error (Tr. Vol. # 2 Pg 20-24).

_____._____.

When informed of the grievance by the Toledo Bar Association, Ms. Cook ratified a response of her attorney that indicated that the 1998 dates on the deeds were correct (Tr. Pg 166). In reviewing the file, Ms. Cook believed at that time, several years after the fact of Ms. Benfer's representation, that the dates were correct. She only discovered the errors in the deeds after the formal complaint was filed (Tr. Vol. # 2 Pg 63).

The existence of inaccuracies in dating of the deeds and the realization that they were due to clerical errors was brought to Ms. Cook's attention by:

1. Receipt of a formal complaint in this matter which alleged the deliberate back dating of the deeds. (Tr. Vol. # 2 Pg. 63).

2. The deed purportedly executed in 1998 referred to a trust created in 2000 (Tr. Pg. 161).

3. The Notary Public was not a Notary Public in 1998 (Tr. Pg 167).

4. Ms. Cook's realization that the deed had been cloned from some other deed and the dates were not changed (Tr. Pg.167).

In mitigation, there were substantial changes made in office procedure to see that these kind of errors would not be repeated in the future (Tr. Vol #2 Pg. 37-38; Tr. Vol # 2 Pg 41-43)

ARGUMENT

1.There is no evidentiary support for the findings of misconduct.

In this matter the Relator presented no witnesses other than the cross examination of the Respondent which the Board apparently disregarded. There was no contrary testimony. The Relator failed to carry its burden of proof by producing clear and convincing evidence of misconduct. In fact, the Relator produced

no evidence whatever of misconduct. The documents themselves do not prove intent to defraud.

The Board finds that the testimony of Ms. Cook is not credible. (Board's Report pg 5 paragraph 11.). The failure of credibility does not give rise to the inference that misconduct occurred. There must be testimony or other evidence to establish the facts found by the Hearing Panel and contained in the Board's Report. The only other testimony contained in the record was that of Wendy McKay, which corroborated Ms. Cook's testimony, and a tax expert produced by the Respondent who testified that respondent did nothing improper in taking the charitable tax deduction.

The Board has wide latitude to determine the weight given to evidence and the credibility of witnesses before it. *Soin et al v Greene County Board of Revision*, 110 Ohio St.3d 408; 2006 Ohio 4708; 853 N.E.2d 1165 (2006). But in this case, the lack of weight and credibility of Respondent's testimony does not create a record of any misconduct. To disregard the testimony of the Respondent leaves the record bare. The record is silent if the testimony of Respondent is disregarded by the Board.

If the Board gives weight and credibility to Ms. Cook's testimony, then there is no proof of misconduct and certainly no clear and convincing proof of misconduct. If the Board does not find the testimony of Ms. Cook to be credible and gives such testimony no or little weight, then it must look to other clear and convincing testimony or evidence in support of the charges of misconduct. There isn't any in this case.

Linda Cook, Respondent, testified. Her testimony was corroborated by Wendy MacKay:

1. Esther Benfer had no family or children. She asked Linda Cook if she would accept conveyance of the farm to her and, when it was time, convey the farm to the church. (Tr. Pg 152). There is no evidence of any kind to the contrary.

2. Ms. Cook directed her staff to prepare a deed which she proof read and then returned for corrections. She did not prepare the deed that was actually used. (TR Pg 153-155). There is no testimony or evidence to the contrary.

3. The deeds which were mistakenly dated were created by a staff member who cloned a deed from a prior deed stored in the office computer and on which the staff failed to correct the date. (Tr. Pg 155-157). There is no testimony or evidence to the contrary.

4. Ms. Cook did not discover the incorrect dates until the formal complaint was issued in this matter. (Tr. Pg 155). There is no testimony or evidence to the contrary.

5. Ms. Benfer had insufficient income to use the charitable tax deduction and if Ms. Cook didn't use it, the deduction would have been lost. (Tr. Pg 162-163). There is no testimony or evidence to the contrary.

6. When Ms. Cook took the tax deduction it was with the permission of Esther Benfer. (Tr. Pg 158). (There was no reason to suggest that Ms. Benfer consult another attorney. She could have consulted anyone she wished but the fact that she was unable to use the deduction would not change.) There is no testimony or evidence to the contrary.

7. When the tax deduction was used by Ms. Cook on her 2000 federal tax return in October of 2001, there was no attorney-client relationship in existence between Ms. Cook and Esther Benfer. Tr. Pg 159. There is no testimony or evidence to the contrary.

8. Ms. Cook intended no fraud or artifice in the preparation of any of the deeds, and if she had discovered the errors, she would have corrected them. (Tr. Pg. 172-173). There is no testimony or evidence to the contrary.

The Board's Report further stretches the credibility of the reader for:

1. To believe that the deeds were purposefully created to defraud fails to take into consideration that what was created was a 1998 deed which incorporates a 2000 trust. This certainly is something that anyone seeking to defraud would have changed or eliminated from the deed.

2. The Notary on the deeds was not a Notary in 1998.

3. No one was injured by the errors nor was anyone even subject to a possible injury and the mistaken dates were of no consequence.

4. The Board's Report makes findings for which there is absolutely no support in the record.

Further, the Board's report misstates the testimony and misunderstands the significance of the testimony in making its findings, for example:

1. On page 6, paragraph "a" of the Board's Report the Board states that Respondent made the claim that she received the Benfer farm in December of 1997 on her 2000 federal tax return. In order to make this finding the panel and Board have to totally ignore the testimony of Respondent's tax expert referring to the 1997 date as being the product of "Tacking" and explaining that the taxpayer is allowed to take your donor's holding period. Tr. Vol#2 Pg. 86:

> "Q Let me ask you to make an assumption that Ms. Cook did not, in fact, acquire the property in 1997 but, in fact acquired it in 2000. Would that have any effect on the amount or validity of her tax deduction for that charitable contribution?
> A No.
> Q Why not?
> A Because she is a carry over basis and carry over holding period."

After some brief questions indicating that the questioner did not understand the subject or the answers he was getting, the questioner continued:

> Q Okay. But if, if she acquired the property in 2000 it would be a short term gain or —
> A. She has a carry over holding period.
> Q What do you mean by a carry over basis?
> A She takes the basis of the donor."
> Tr. Vol#2 Pg 91

Further demonstrating that the panel did not understand the testimony or didn't hear it a panel member asks:

> "Q. And if the signer of the income tax return knew that they didn't obtain title to the property in December of 1997, would that be a violation of the federal income tax law?
> A. I guess it could be a technical violation, sure.
> Q Okay, And what significance would there be, if any, if title to this property were acquired in, instead of December of 1997, in May of 1998?
> A None
> Q And what difference would there be if title to this property were acquired in June of 2000?
> A. Same answer."
> Tr. Vol#2 Pg 91

In spite of the expert having stated it twice, the panel and thus the Board make a finding that Respondent

made a false claim on her income tax return when she did not.

Board's Report pg 6 paragraph a).

It should be noted that only the formal donor of property to a charitable institution can take the tax deduction anyway. Not only couldn't Esther Benfer take the deduction because she had insufficient income, but she was not the donor recognized by the tax service.

2. There are findings of misconduct which were not charged or complained about in the complaint filed in this matter.

The complaint (each count will be dealt with separately) filed in this matter contains two counts charging two separate acts of misconduct neither of which was found by the hearing panel or in the Board's report:

Count One:

"That the respondent deliberately back dated deeds in order to avoid Medicaid's five year "look back" provisions in violation of DR 1-102(A)(4) and DR1-102(A)(6)."

Neither the hearing panel nor the Board's Report makes findings of fact or conclusions of law which support the allegations of Count One of the formal complaint. There has been no finding that the deeds were back dated in order to take advantage of the look

back period of Medicaid and, in fact, there is no testimony nor evidence in support of this allegation.

Count Two:

> "That the Respondent claimed a tax deduction on her personal Federal tax return for the charitable gift deduction of real estate in violation of DR 5-104(A)(1) by accepting employment in a matter in which the exercise of the lawyer's professional judgment reasonably may be affected by the lawyer's financial, business property or personal interests and DR 1-102(A) entering into a business transaction with a client if they have differing interests therein and DR 1-102(A)(4) conduct involving fraud etc. DR 1-102(A)(3) illegal conduct involving moral turpitude and Dr 1-102(A)(6) conduct adversely reflecting on the lawyer's fitness to practice law."

The crux of the complaint in Count Two is that a lawyer's position as attorney is compromised by her interest in the tax consideration. In order for the count to survive, the panel must find, amongst other findings, that at the time that Ms. Cook took the tax deduction she was an attorney for Ms. Benfer. If she was not acting as an attorney, if there was no attorney-client relationship, the count fails. The only testimony or evidence of the existence or non - existence of an attorney-client relationship at the crucial time is the testimony of Ms. Cook, when she was asked that specific question:

"Q At the time that your tax return for the year 2000 was filed. It's dated sometime in October of 2001, was it filed on that date?"
"A That's the date I signed it and mailed it."
"Q At that time was there an attorney/client relationship between you and Esther Benfer?"
"A No."
Tr. Pg 1598-159

Accordingly, due to the absence of any proof of the existence of an attorney- client relationship between Ms. Cook, Respondent, and Ms. Benfer, Count Two must fail. Key to a violation of the rules is the existence of an attorney- client relationship.

The Board's Report makes a finding in regard to Count Two, but other than repeating the context of the count, the Board makes no statement as to what the violation or misconduct was, if any. Paragraph 21 on page 10 of the Board's Report can be as easily read to hold that there was no violation of Count Two, for none is stated by the Board. Certainly, without a finding of an attorney-client relationship at the time, no misconduct can exist and the Board makes no such finding.

The Board however makes a specific finding that "the Respondent engaged in other conduct that adversely reflected on Respondent's fitness to practice law." See Board Findings Paragraph 20, pg10, apparently in response to the charge of Relator that there was a violation of DR 1-102(A)(6) but without indicating what that conduct was and without making any further findings. That other conduct, whatever it

was, which certainly influenced the Board to make its recommendation of disbarment was not charged in the complaint and the finding of a violation should not stand, otherwise there is a substantial lack of procedural due process. *In Re Ruffalo*, 390 U.S. 544; S. Ct. 1222; 20 L.Ed. 2d 117, 43 Ohio Op. 2d 459 (1968).

While the Board does not identify what other acts influenced its opinion, it is clear that the Board made findings of misconduct of some other acts which affected its determination of a sanction and specifically weighed on minds of the members of the Hearing Panel in their finding that the Respondent was not fit to practice law.

While the Rules of the Board do not make it clear that all acts of misconduct must be charged and that the respondent cannot be found guilty of acts not charged, such rules are certainly implied and this Court has so found in other cases. *Ohio State Bar Ass'n vs Reid*, 85 Ohio St.3d 327, 708 N.E.2d 193 (1999).

Procedural due process must be given the lawyer in misconduct proceedings. *In Re Ruffalo*, 390 US 544, 88 S. Ct. 1222, 20 Led2d 117 (1968). The Ruffalo case originates in Ohio where it was complained to the federal court that there were many findings of misconduct none of which were charged in the complaint. The United States Supreme Court found that Ohio violated Ruffalo's fight to procedural due process by giving him no notice in the complaint filed against him as to the misconduct that was being charged. To find the lawyer committed misconduct not charged in the formal complaint violates those due process protections. In the Ruffalo case, the attorney,

Ruffalo, was disbarred by Ohio. The United States Supreme Court refused to disbar Ruffalo from federal courts because the misconduct Ruffalo was found guilty of was never charged in the formal complaint. The Court made it clear that had Ruffalo raised the Ohio disbarment in the federal proceedings, the court would have reversed the Ohio Court's findings for lack of due process. That case and those findings apparently has not made an impact sufficient to put an end to the practice of finding misconduct not charged. The opinion of the Board in this case is full of findings concerning actions not charged in the complaint. As was Ruffalo, Ms. Cook has been denied procedural due process.

This Hearing Panel and the Board's report indicate that the panel did not find Ms. Cook's testimony to be credible. It makes no statement in regard to the testimony of Ms. McKay which corroborates the testimony of Linda Cook. Certainly the finder of fact is the judge of credibility but, having found that certain testimony is not credible, in the absence of any other proofs, the finder of fact cannot make findings of fact not supported by any evidence. In the absence of evidence there cannot be an inference. In this case there is absolutely no evidence in support of the complaint charged against Ms. Cook even if her testimony is disregarded. If Ms. Cook's testimony is not disregarded, there is no evidence of misconduct.

The Panel announced at the onset of this trial that the measurement of the burden of proof was" clear and convincing". The panel stated:

> "... The burden of proof is on the Relator and to establish misconduct it must be proven by clear and convincing evidence..."
>
> Tr. Pg 5.

While all of the deeds are in evidence and the dates are reflected in the deeds, in the absence of Ms. Cook's testimony, if that testimony is to be disregarded, there still is a total absence of proofs which support misconduct. This Court set forth the elements which have to be proven to establish fraud in *The State Ex Rel The Illuminating Company vs Cuyahoga County Court of Common Pleas* et al, 97 Ohio St. 3d 69, 2002 Ohio 5312; 776 N.E.2d 92 (2002). Those elements are: (1) A representation or concealment of fact which is material. (2) Made falsely with knowledge of its falsity or with recklessness or disregard as to its falsity. (3) With intent to mislead another into relying upon it. (4) Justifiable reliance upon the representation or concealment. (5) Resulting in injury proximately caused by the reliance.

The proofs in this case fail to establish any of those elements:

1. There is no evidence whatever that the deeds were fraudulently prepared. (Ms. Cook testified that she did not prepare the deeds with the wrong dates and didn't know about them at the time).

2. There is no evidence that any matter contained in the deeds was made falsely

with knowledge of its falsity or with recklessness or disregard of its falsity.

3. There was no evidence whatever that the deeds were prepared with intent to mislead another into relying upon them. Further if someone did rely upon them, there would have been no injury.

4. There was no testimony from anyone of reliance on the deeds and,

5. There was no evidence of any injury proximately caused by the reliance on the incorrectly dated deeds.

There is no evidence of any kind establishing any, let alone all, of the elements of fraud as set forth by this court in *The State Ex Rel The Illuminating Company vs Cuyahoga County Court of Common Pleas et al*, 97 Ohio St.3d 69; 2002 Ohio 5312; 776 N. E2d 92 (2002) In the absence of such evidence, there is a complete failure of proof of any misconduct charged in Count One of the formal complaint.

If on the other hand, the testimony of Ms. Cook is not disregarded, there can be no finding of misconduct for her testimony establishes the fact that:

1. She did not prepare the deeds "A" or "B".

2. She was not aware of the wrong dates on the deeds until the formal complaint was filed in this action.

3. She engaged in no deception and had no intent to do so.

4. There was no injury sustained by anyone and none planned.

The Hearing Panel does not have the right to imagine the opposite of Ms. Cook's testimony because they do not find that testimony credible. They still have to support their findings by clear and convincing evidence and in this case, no such evidence has been presented.

3. The Hearing Panel denied Respondent's motion to have a separate hearing on aggravation and mitigation, requiring respondent to express remorse for acts which she maintained were not misconduct thereby denying her a fair hearing.

Prior to the commencement of proofs in the trial of this matter, Respondent made a motion for a bifurcated hearing (Tr. Pg 8) contending that to require the respondent to show remorse before she was found guilty of acts of misconduct violated her right to a fair trial and violated her right to have her actions or inactions weighed without a lack of remorse entering the picture.(Tr. Pg. 8) To hold to the contrary, Respondent argued, violated her right to due process of law.(Counsel for respondent also wrote this Court and asked the Court to review the process and establish a bifurcated hearing so that a lawyer could press a defense without being required to have his or her client show remorse. This court responded to

counsel's inquiry denying the necessity of entertaining such a request.)

> "Once misconduct is found, the issue becomes the appropriate discipline..."
>
> ABA/BNA Lawyer's Manual on Professional Conduct Sect. 101.3001(1986) cited with approval in *Carlos Guerrero vs. Board of Education of the Emery Unified School District*, 1994 LEXIS 9259. See Appendix for a copy of this opinion

Fair play is one of the cornerstones of our legal system. Lawyers accused of misconduct have a right to the same fair play as any other person charged with mal conduct in this legal system. It is not fair to require the showing of remorse before there is a finding of misconduct. Why should one who believes herself not to be guilty of acts of misconduct be required at the same time to show remorse for those acts which she claims are not improper. The Hearing Panel and the Board's report specifically found that the Respondent did not show remorse:

> "Respondent has totally failed or refused to acknowledge any wrongful nature of her conduct."
>
> Board findings paragraph E pg 12 Appendix pg A-12

The conflicting requirements of pressing a defense and at the same time showing remorse or admitting

that her actions were wrong violated the Respondent's rights to a fair trial.

Showing remorse or admitting wrongful conduct not only detracts from her defense, it is an act contrary to and inconsistent to that defense and can be viewed as an admission of wrongful conduct. How can one admit wrongful conduct on the one hand and at the same time press a defense that the conduct was not wrongful? Why should an attorney have to show remorse for an act of misconduct while she is attempting to show that the act was not misconduct? Such a requirement is not fair and it does violate the right to a fair hearing and did violate this respondent's right to a fair hearing and did deny her due process of law. *In Re Oliver*, 333 U.S. 257; 68 S. Ct 499; 92 L.Ed. 682 (1947) cited with approval in *In Re Ruffalo*. 390 U.S. 544; 88 S. Ct. 1222; 20 L.Ed.2d 117; 43 Ohio Op.2d 459 (1968)

Ms. Cook did testify that she had taken steps, identifying those steps in substantial detail, to see that the acts she was accused of committing would never happen again, (Tr. Pg 159) but, she was of the belief that she had done nothing constituting misconduct(Tr. Pg. 159). It certainly would have been easy to show remorse, but such a showing would have forced the respondent to compromise her defense.

Would this Court countenance the requirement that in a murder trial the defendant be required to show remorse for his actions at the same time he was contending that he did not commit murder? Obviously this illustration is the extreme, but fair play should be equally applicable to attorney misconduct proceedings.

The Respondent understands that hearing panel members are volunteers and some may come to the hearing from a great distance, but is the inconvenience of the Hearing Panel members, if a bifurcated hearing be required, reason to compromise a fair hearing and due process?

4. The recommended sanction of disbarment is far too severe and not supported by the record; there is a total lack of guidelines for the imposition of any sanction.

The rules established by this Court for the discipline of Ohio attorneys on a finding of misconduct totally lack any guidance and have the tendency to lead to substantial variances in the recommended imposition of sanctions based on the innate prejudices of hearing panel members. *Section 6 of Rule 5 of the Rules for the Government of the Bar of Ohio* set up the sanctions which may be imposed on an attorney after a finding of misconduct. There is however, within the Rules a total lack of any guidelines for the imposition of a particular sanction. For example, what conduct justifies disbarment? What conduct justifies a sanction of a suspension for a designated period of time? What conduct justifies a reprimand?

To what extent and weight in the imposition of a sanction should the following characteristics play a role and what weight should be imposed on each of these characteristics:

1. No injury to the client, complainant or the public.

2. No potential for injury to the client, complainant or the public.

3. Inadvertent conduct establishing misconduct.

4. Deliberate conduct establishing misconduct.

5. Certain designated conduct such as criminal violations.

In making its recommendation to this court, the Board is left to its own devices with no guidelines at all. Take the alleged conduct of Ms. Cook as supported or not supported by the evidence. Does this conduct require a certain level of admonishment or punishment and if so, what is that level? The Board has recommended disbarment in this case where no one was injured, where there was no potential for injury and where there was no deliberate conduct. If there were deliberate conduct with substantial injury or substantial likelihood of injury should not the sanction imposed be greater than that to the contrary?

If we examine the whole record it is difficult to come away with the impression that there was misconduct or if there was, the misconduct is so miniscule that a sanction is neither necessary for the protection of the public nor desired. Yet the Board has recommended disbarment.

The American Bar Association has developed guidelines for the imposition of sanctions which this court could adopt.

In any case, the sanction suggested by the Board to be imposed upon the Respondent in this case is not justified by the record and far too severe. In fact, the record raises the question of whether the allegations in the complaint have been proven at all, let alone by clear and convincing evidence.

REQUESTED RELIEF AND SIGNATURE

The Hearing Panel and Board exceeded its authority and found misconduct which was not charged in the complaint giving the Respondent no opportunity to present a defense to those charges.

The Hearing Panel neglected to decide the items of misconduct that were charged and found misconduct which is not supported by the record.

This Court should either dismiss these charges in their entirety or remand the case to the Board for rehearing before a new panel.

/s/_____

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Note: Original attachment pages A-1 - A-14, is Appendix G, page 51a.

Note: Original attachment pages A-15 - A-33 have been redacted for this Appendix.

APPENDIX I

BEFORE THE BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE OR THE SUPREME COURT OF OHIO

Case No. 05-047

[Filed September 13, 2005]

In Re:	)
Complaint against	)
	)
Linda S. Cook	)
5808 Monroe Street	)
Suite A-7	)
Sylvania, Ohio 43560-2264	)
	)
RESPONDENT	)
	)
Toledo Bar Association	)
311 North Superior Street	)
Toledo, Ohio 43604	)
	)
RELATOR	)
	)

FIRST AMENDED COMPLAINT

(Rule V of the Supreme Court Rules for the Government of the Bar of Ohio)

Now comes the Relator and alleges that Linda S. Cook, an Attorney at Law, duly admitted to practice law in the State of Ohio, is guilty of the following misconduct:

JURISDICTION

1. Relator is authorized to file this Complaint pursuant to Rule V, Sections (3)(C) and (4)(A) of the Supreme Court Rules for the Government of the Bar of Ohio.

2. Respondent, Linda S. Cook ("Respondent"), whose Supreme Court registration number is 0061876, was admitted to the practice of law in the State of Ohio on November 8, 1993, and is subject to the Supreme Court Rules for the Government of the Bar of Ohio.

COUNT ONE

3. Respondent was retained by Ms. Esther Benfer (Benfer) to convey, subject to a life estate, her real estate, known as Benfer Farm, to her church, Metamora United Methodist Church.

4. An initial deed (Deed A, attached) was prepared by Respondent and purports to have been executed on May 20, 1998, by Benfer. The grantor on Deed A is "Esther J. Benfer, Single'" and the grantee is "Linda S. Cook, Trustee".

5. Deed A was not recorded until July 12, 2001.

6. A second deed (Deed B, attached) was prepared by Respondent and is identical to Deed A

with the exception that the word "Trustee" following the name of grantee Linda S. Cook has been crossed out and the word "Married" has been typed above the crossed out word "Trustee." In addition, "Being recorded to correct Grantee marital status" has been typed in along the side of Deed B.

7. Deed B was recorded on September 10, 2001.

8. A third deed (Deed C, attached) was purportedly prepared by Respondent and executed on December 25, 2000, by "Linda S. Cook, married" and "Wayne M. Cook, married, releasing dower rights.'" The grantor on Deed C is "'Linda S. Cook, married" and the grantee is "The United Methodist Church, Metamora, Ohio".

9. Deed C was recorded on December 13, 2001.

10. A fourth deed (Deed D, attached) was purportedly prepared by Respondent and executed on September 2, 2004, by Respondent as "Linda S. Cook, Trustee." The grantor of Deed D is "Linda S. Cook, Trustee" and the grantee is "'The United Methodist Church, Metamora, Ohio."

11. Deed D was recorded On September 8, 2004.

12. At the times material hereto, for purposes of Medicaid eligibility, an applicant's net worth includes the value of all transfers made in the three years prior to the Medicaid application if the transfer is a gift, and for a period of five years prior to the application if the transfer is placed in trust. This is known as the "'look back" provision.

13. In an attempt to avoid the Medicaid "look back" provision, Respondent backdated Deed A to falsely reflect an execution date of May 20, 1998.

14. In an attempt to avoid Medicaid's five year "look back" provision pertaining to transfers to a trust, Respondent, without the approval of the grantor, Benfer, altered Deed A by deleting "Trustee" and adding "Married" behind the grantee's name, and then re-recording this document (Deed B).

15. The conduct of the Respondent constitutes violations of the following disciplinary rules:

> DR1-102(A)(4) in that Respondent engaged in conduct involving dishonesty, fraud, deceit or misrepresentation; and
>
> DR1-102(A)(6) in that Respondent engaged in conduct that adversely reflects on her fitness to practice law.

COUNT TWO

16. Relator realleges all matters alleged in Count One herein.

17. During Respondent's representation of Esther Benfer, Respondent claimed a tax deduction on her personal Federal income tax return for the charitable gift deduction of real estate, i.e. the Benfer Farm, from Esther Benfer to the Metamora United Methodist Church.

18. By reason of the foregoing, Respondent violated DR 5-101(A)(1), accepting employment in a matter in which the exercise of the lawyer's professional judgment reasonably may be affected by the lawyer's financial, business, property, or personal interests; DR 5-104(A), entering into a business transaction with a client if they have differing interests therein; DR 1-102(A)(4), conduct involving dishonesty, fraud, deceit, or misrepresentation; DR 1-102(A)(3), illegal conduct involving moral turpitude; and DR 1-102(A)(6), conduct adversely reflecting on the lawyer's fitness to practice law.

WHEREFORE, Respondent is chargeable with misconduct and Relator requests the Respondent be disciplined pursuant to Gov. Bar Rule V.

Respectfully submitted,

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ATTORNEYS FOR RELATOR

Certificate of Service

I hereby certify that a copy of the foregoing First Amended Complaint was sent by ordinary U.S. Mail to:

Robert H. Golden, Esq., and Armand Kunz, Esq.
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and to Relator's co-counsel of record, this 9th day of September, 2005.

/s/
Johnathan B. Cherry
Bar Counsel

APPENDIX J

BEFORE THE BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE OF THE SUPREME COURT OF OHIO

Case No. 05-047

[Excerpts from Transcript of Hearing, Thursday August 17, 2006, Pages 1-10]

Linda S. Cook, Attorney Reg. No. 0061876, Respondent, vs. Toledo Bar Association, Relator.	)))))))))

DATE OF HEARING:	Thursday, August 17, 2006
TIME:	10:00 a.m.
PLACE OF HEARING:	Ohio Sixth District Court of Appeals One Constitution Avenue Toledo, Ohio 43624
REPORTER :	LORI L. UDOWSKI

CLASSIC REPORTING SERVICE
420 Madison Avenue
Suite 1200
Toledo, Ohio 43604
419.243.1919

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I-N-D-E-X

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APPEARANCES:

HEARING PANEL: CHARLES COULSON
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THERESA PROENZA

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Thursday Morning Session

August 17, 2006

10:00 a.m.

* * * * * * * * * * * * * * *

MR. COULSON: Good morning. I have an opening statement I want to read.

This is a formal hearing on a complaint filed with the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio. In a moment, I will have counsel for their respective parties identify themselves for the record. Let the record show that the

Respondent, Linda Cook, is present in the hearing room.

The proceeding this morning is held pursuant to the provisions of Rule V of the Supreme Court Rules for the Government of the Bar of Ohio governing disciplinary procedure which has been adopted by the Supreme Court of Ohio.

For the purposes of this hearing, we refer throughout to the Board of Commissioners, which consists of twenty-eight members, as the board. As you are all aware, a formal complaint is heard before a Panel of

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three Commissioners as provided in Section 6(D) of Governing Bar Rule V. We will, therefore, refer to the three members sitting here this morning as the Hearing Panel.

Sitting on the Hearing Panel this morning to my right is the Honorable Daniel Gaul of Cuyahoga; and to my left is Theresa Proenza of Summit; and I am Charles Coulson, Chair of the Panel.

Let me state for the record that none of the members of the panel is a resident of the appellate district from which the complaint originated and none of us served on the probable cause panel that reviewed this matter.

As members of the Panel conducting this formal hearing we are here as an arm of the Supreme Court

of Ohio. As a Panel under the rules, we are empowered to make findings of fact, conclusions of law and recommendations. The burden of proof is on the Relator and to establish misconduct it must be proven by clear and convincing evidence. After this hearing is concluded, this panel may: (1) dismiss this complaint;

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or (2) recommend dismissal to the Board; or (3) find the Respondent guilty of misconduct and make a certified report to the Secretary for review by the Board. The Board then makes its final decision including the making of recommendations on a sanction to the Supreme Court of Ohio.

We are expecting the ordinary and usual cooperation of counsel that would be given if the Supreme Court were conducting this hearing. As far as members of this Panel are concerned, we do not want to do anything that would interfere with or prevent the full and proper representation of each side, but whenever and wherever it is possible to enter into stipulations, we ask that you give this earnest consideration so that the matter may move along as expeditiously as possible. Counsel for each party has received pre-hearing instructions, and we ask that you comply with them to the best of your ability. The ordinary rules of evidence are observed and if there is an objection, please wait for a ruling from the chair.

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At the conclusion of testimony, any witness may be questioned by members of the Hearing Panel. All witnesses testify under oath.

I will now ask that the counsel for the Relator and counsel for the Respondent to identify themselves for the record.

MR. MANAHAN: I'm Michael Manahan of the law firm of Manahan Pietrykowski Delaney and Wasielewski here in Toledo.

MR. BONFIGLIO: Mike Bonfiglio from Connelly, Jackson and Collier also in Toledo.

MR. CHERRY: Jonathan Cherry, Bar counsel, Toledo Bar Association.

MR. GOLDEN: I'm Robert Golden of Michigan Bar here by pro hac vice motion which has been grand as counsel for the Respondent.

MR. KUNZ: Armand Kunz, Michigan attorney, also here pro hac vice for the Respondent.

MR. COULSON: One final note. Under Section 11 (E) of Rule V after a complaint is certified by a probable cause panel, the complaint and all subsequent

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proceedings, including this hearing, are open to the public.

Is there anything preliminary that we need to address before we get started?

MR. GOLDEN: I have a preliminary motion. It's my understanding reading the Rules that govern this hearing that it's incumbent upon the Respondent during the course of this hearing to show remorse for the allegations of misconduct which are in the formal complaint. I find that a showing of remorse under those circumstances is a denial of the right of the Respondent to maintain before this Panel that she has done nothing improper that constitutes misconduct or nothing wrong under the laws of the State of Ohio or of the United States, because to show remorse for something that you don't believe you did denies you in my opinion a fair hearing. I, therefore, ask that in regard to mitigation and aggravation circumstances you hold a separate hearing after the findings of misconduct, if any.

Now, I'm very cognizant of the fact that all of you are in essence volunteers

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here and come from some distance so that I have absolutely no objection should there be a finding of misconduct that a hearing on mitigation and aggravation immediately follow such a finding. However, it is my desire and I think it appropriate to

isolate and keep separate the question of mitigation and aggravation from the question of wrongdoing.

MR. COULSON: Do you have any response?

MR. CHERRY: I'm electronically challenged. This motion has been filed previously and denied. We suggest that this goes entirely outside of the procedure that has been set forth by the Supreme Court for dealing with these matters and if Respondent seeks to express or refrain from expressing remorse for her conduct, that is a tactical decision that she can make with the assistance of her counsel and we don't believe that a separate hearing for purposes of aggravation and mitigation is either warranted under the rules or particularly appropriate in this case. Thank you.

MR. GOLDEN: Brief response, if I

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may. The motion that was made previously was for finding that Rule X was unconstititional and it was denied. The motion made this morning is somewhat different in that the constitutionality of the Rule, at least for this hearing, is not being challenged, it's the procedure incumbent upon the Respondent to show remorse during the trial which has not yet determined she did anything wrong, that I find to be inconsistent and bordering a denial of due process. I make the motion not to belabor the point or aggravate the Panel, but rather to preserve the issue so it cannot be said that that issue was waived in the event we wish to go further with this.

MR. COULSON: Thank you. We'll take the motion under advisement and make a ruling later and see what happens in the hearing.

MR. GOLDEN: Thank you.

MR. COULSON: Is there an opening statement from the Relator in this matter?

MR. BONFIGLIO: Mr. Chairman, Panel members. The two counts of Relator's complaint arise out of Attorney Cook's

* * *